

COMBINED TRANSMITTAL OF APPEAL BRIEF TO THE BOARD OF PATENT  
APPEALS AND INTERFERENCES & PETITION FOR EXTENSION OF TIME  
UNDER 37 C.F.R. 1.136(a) (Small Entity)

Docket No.  
99-1140V

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In Re Application Of: JAY S. WALKER et al.

Application No.	Filing Date	Examiner	Customer No.	Group Art Unit	Confirmation No.
09/604,898	June 28, 2000	Eric W. Stamber	22927	3622	6292

Invention:

METHOD AND APPARATUS FOR CONDUCTING OR FACILITATING A PROMOTION

COMMISSIONER FOR PATENTS:

This is a combined Transmittal of Appeal Brief to the Board of Patent Appeals and Interferences and petition under the provisions of 37 CFR 1.136(a) to extend the period for filing an Appeal Brief.

Applicant(s) hereby request(s) an extension of time of (check desired time period):

☐ One month    ☐ Two months    ☐ Three months    ☐ Four months    ☒ Five months

from: June 1, 1005                      until: November 1, 2005  
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TO THE COMMISSIONER FOR PATENTS:

This combined Transmittal of Appeal Brief to the Board of Patent Appeals and Interferences and petition for extension of time under 37 CFR 1.136(a) is respectfully submitted by the undersigned:

  
Signature

Dated: November 1, 2005

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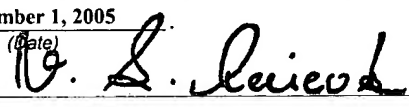
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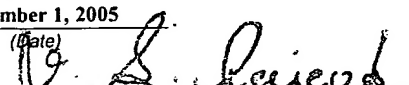
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CC:

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Appellants: Jay S. Walker, Geoffrey	)	Group Art Unit: 3622
M. Gelman, James A.	)	
Jorasch, Peter Kim,	)	Examiner: STAMBER,
Timothy A. Palmer, Keith	)	ERIC, W.
Bemer, Andrew P.	)	
Golden, Scott B. Allison	)	<b>APPEAL BRIEF</b>
	)	
Application No.: 10/604898	)	Attorney Docket No.: 99-112
	)	
Filed: June 28, 2000	)	
	)	
For: METHOD AND APPARATUS	)	
FOR CONDUCTING OR	)	
FACILITATING A	)	
PROMOTION	)	

**BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Appellants hereby appeal to the Board of Patent Appeals and Interferences  
from the decision of the Examiner in the Office Action mailed November 30, 2004.

## TABLE OF CONTENTS

<b>IN THE UNITED STATES PATENT AND TRADEMARK OFFICE .....</b>	<b>1</b>
REAL PARTY IN INTEREST .....	4
RELATED APPEALS AND INTERFERENCES .....	5
STATUS OF CLAIMS .....	6
STATUS OF AMENDMENTS .....	7
SUMMARY OF CLAIMED SUBJECT MATTER .....	8
GROUND OF REJECTION TO BE REVIEWED ON APPEAL .....	11
1. Section 101 .....	11
2. Section 103(a)—Kepecs .....	11
ARGUMENT .....	12
1. Summary of Arguments .....	12
1.1. Section 101 Rejection .....	12
1.2. Section 103(a) Rejections .....	12
2. Form of Appeal Brief .....	14
3. Section 101 .....	15
3.1. Sole Basis for Rejection: “Not Within the Technological Arts” ...	15
3.2. The Board: No Separate “Technological Arts” Test for Statutory Subject Matter Exists .....	15
3.3. Each of Claims 291-298 and 300 Produces a Useful, Concrete and Tangible Result .....	16
3.4. Section 101 Rejection Must Be Reversed .....	16
4. Section 103(a)—Kepecs .....	17
4.1. Applicable Law .....	17
4.2. Claims 295-299 .....	24
4.3. Claims 291-294 .....	29
4.4. Claim 292 .....	33
4.5. Claim 293 .....	34
4.6. Claim 300 .....	35
4.7. Claim 289 .....	39
4.8. Claim 288 .....	43
4.9. Claim 290 .....	47
4.10. Claims 147-150 and 259-276 .....	51
4.11. Claims 253-255 .....	55
4.12. Claims 256-258 .....	59
4.13. Claims 155-158, 278-282, and 287 .....	63

4.14.	Claims 139-142 .....	67
4.15.	Claims 159-162 and 283-286 .....	71
4.16.	Claims 163-248 .....	74
4.17.	Claim 197 .....	78
4.18.	Claim 176 .....	81
4.19.	Claims 221-224 .....	82
4.20.	Claim 246 .....	83
4.21.	Claim 218 .....	85
4.22.	Claims 143-146, 249, and 250-252 .....	87
4.23.	Claims 151-154 and 277 .....	91
CONCLUSION .....		94
APPENDIX A—CLAIMS INVOLVED IN THE APPEAL .....		95
APPENDIX B—EVIDENCE <NONE> .....		136
APPENDIX C—RELATED PROCEEDINGS <NONE> .....		137

## **REAL PARTY IN INTEREST**

The present application is assigned to Walker Digital, LLC, 1177 High Ridge Road, Suite 128, Stamford, CT 06905.



## **RELATED APPEALS AND INTERFERENCES**

Appellants, Appellants' legal representative and Appellants' assignee know of no interferences or appeals that will directly affect, be directly affected by, or have a bearing on the Board's decision in the pending appeal.

## **STATUS OF CLAIMS**

Claims 139-300 are pending.

Claims 139-300 are rejected and are being appealed.

Claims 1-138 are canceled.

## **STATUS OF AMENDMENTS**

No amendments have been filed subsequent to the Office Action mailed November 30, 2004.

## **SUMMARY OF CLAIMED SUBJECT MATTER**

Claims 139-163, 249, 250, 253, 256, 259, 277, 278, 283, 286-291, 295 and 300 are independent. A concise summary of claimed subject matter with some examples is provided below.

According to some embodiments of the present invention, methods and apparatus are provided for conducting or enabling a promotion and for distributing promotions or portions of promotions to potential users. The methods and apparatus of advantageously provide a merchant or promotion organizer flexibility in the way they conduct or operate the promotion as well as an ability to change one or more aspects of the promotion during the operation of the promotion. Such benefits can be achieved while reducing, or even eliminating in some cases, the costs and other shortcomings associated with print based promotions. [See, e.g., Specification, page 2, lines 18-25].

According to some embodiments, a method and apparatus for conducting a promotion includes functionality for generating an outcome, generating an unlock code associated with the outcome, providing an indication of the outcome, providing an indication of the unlock code, and providing an indication of a benefit associated with the outcome. In general, when created, an outcome is “locked” or otherwise hidden or covered so that any prize, value, symbol or other benefit associated with the outcome may only be viewed, displayed or otherwise determined after the outcome is “unlocked” or otherwise revealed with an unlock code. Outcomes and/or unlock codes may be generated and/or provided by a controller or other central source. The controller or central source may be operated by, for or on behalf of a lottery organization or other organization desiring to operate or conduct a promotion. In general, one or more outcomes will be generated and provided to one or more users or other people by a central source,

such as a controller, a manufacturer, etc. The controller may also generate and provide the outcomes and associated codes to an intermediary, such as a merchant or retailer. The merchant, retailer or other intermediary can then provide a code to a user, thereby allowing the user to unlock one of the previously received outcomes. In some embodiments, the merchant intermediary may or may not know the prize, benefit, value, symbol, etc., associated with any outcome provided by the merchant intermediary to the user. [See, e.g., Specification, page 2, line 31 to page 3, line 10; page 8, lines 12-19; FIG. 1 (50); FIG. 2 (102, 104, 106, 110); FIG. 8 (202); FIG. 12 (54); FIG. 14 (56) and accompanying text].

According to some embodiments, either or both of an outcome and an unlock code may be provided to a user, user device, intermediary and/or intermediary device. Typically, an intermediary may be, include, or function on behalf of a merchant, a group of merchants (*e.g.*, a shopping mall), a franchisee, etc. that desires to operate a promotion or participate in a promotion. In some embodiments, a controller may provide an outcome to a user or user device and an unlock code capable of unlocking the outcome to an intermediary or intermediary device, or *vice versa*. The user may then receive the unlock code for the outcome from the intermediary or intermediary device. In some embodiments, a qualifying action may be associated with either the outcome or the unlock code. The benefit associated with the outcome may not be provided until after the qualifying action is completed. Completion or satisfaction of the qualifying action may need to be verified in some embodiments or implementations. In other embodiments, the outcome, unlock code, benefit and/or qualifying action may have an expiration date associated with them or they may otherwise be terminated from further use. [See, e.g., Specification, page 3, lines 11-24; FIG. 5 (400) and accompanying text].

The method and apparatus of the present invention may operate in both lottery and non-lottery type implementations. [See, e.g., Specification, page 10, lines 14-15].

According to some embodiments, a controller may generate unlock codes and then sell the unlock codes to various merchants. For example, Merchant A purchases twenty thousand unique unlock codes. Merchant A then advertises that a user may receive an unlock code merely by visiting the merchant and up to ten unlock codes each time the user purchases a product at Merchant A. [See, e.g., Specification, page 10, lines 28-32; page 12, lines 6-15].

## **GROUND OF REJECTION TO BE REVIEWED ON APPEAL**

### **1. Section 101**

Claims 291-298 and 300 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter for failing to be “within the technological arts...even though said claims are limited to language to a useful, concrete and tangible application.”

### **2. Section 103(a)—Kepecs**

Claims 139-300 stand rejected under 35 U.S.C. § 103(a) as being obvious in view of:

findings that Examiner Young alleges are supported by evidence in Kepecs (U.S. Patent No. 6,330,543).

## **ARGUMENT**

### **1. Summary of Arguments**

All of the rejections are inappropriate and Appellants respectfully request that the rejections be reversed.

#### **1.1. Section 101 Rejection**

The Section 101 rejections fail because they are based solely on the Examiner Young's assertion that Claims 291-298 and 300 fail a so-called "technological arts" standard. Examiner Young has explicitly found that each of Claims 291-298 and 300 produces a useful, concrete, and tangible result.

The Board of Patent Appeals and Interferences ("the Board") has expressly held, in a precedential opinion, that there is no judicially recognized separate "technological arts" test to determine patent eligible subject matter under § 101. Ex parte Lundgren, Appeal No. 2003-2088, 9 (BPAI Oct., 2005). The Section 101 rejections must be reversed.

#### **1.2. Section 103(a) Rejections**

All of the Section 103(a) rejections fail because Kepecs cannot support all of Examiner Young's assertions as to what was known in the prior art, Examiner Young does not make the requisite showing based on actual evidence of record that all claimed subject matter was known, and the record cannot support all of Examiner Young's assertions as to what was in the prior art.

Even if any of the evidence of record disclosed all of the teachings asserted by Examiner Young, the actual evidence of record lacks any teaching, suggestion, or motivation to modify the Kepecs reference to provide any of the specific



combination of features of any claim. Also, even if the evidence of record supported Examiner Young's purported motivation to modify Kepecs in the manner suggested, the resulting modification would fail to teach or suggest all of the specific features of any claim. The Section 103(a) rejections must be reversed.

**1.2.1. "repetition and multiplicity" basis is improper**

In some instances, Examiner Young purported to be rejecting claims (Claims 261-277, 279-300) as somehow obvious over Kepecs "for at least substantially the same reasons as the rejections for" respective sets of multiple claims and also "based on the 'degree of repetition and multiplicity.'" This is an inappropriate basis for a Section 103(a) rejection. Examiner Young admitted in the Interview Summary: "The Examiner advised that it appears that the prior Office action did not follow the guidelines [sic] of MPEP 2173.05(n) concerning the rejections of said claims...and the Examiner also advised that the subsequent Office action responding to said request for reconsideration would NOT be made a final Office action." [page 3].

## 2. **Form of Appeal Brief**

In the arguments herein, limitations of the claims are indicated in *italics* and the references of record are indicated by underlining.

In separate arguments of patentability for separate claims (or groups of claims), Appellants have, where possible, referred to prior arguments to avoid undue repetition.

In the arguments below, Appellants refer to:

- Third Office Action: Final Office Action mailed November 30, 2004
- Examiner's Interview Summary: Interview Summary mailed December 28, 2004

### 3. Section 101

Appealed Claims 291-298 and 300 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter.

#### 3.1. Sole Basis for Rejection: “Not Within the Technological Arts”

In rejecting Claims 291-298 under Section 101, Examiner Young states: “As per Claims 291-298 & 300, as drafted said claims are not limited by language within the technological arts..., even though said claims are limited to language to a useful, concrete and tangible application.” [Third Office Action, page 3].

Accordingly, Examiner Young has rejected Claims 291-298 and 300 only because of an alleged failure to be “within the technological arts.”

#### 3.2. The Board: No Separate “Technological Arts” Test for Statutory Subject Matter Exists

In a recent precedential opinion, the Board expressly held that the alleged requirement that a claim must be “within the technological arts” has no legal basis:

Our determination is that there is currently no judicially recognized separate "technological arts" test to determine patent eligible subject matter under § 101. We decline to create one. Therefore, it is apparent that the examiner's rejection can not be sustained.

Ex parte Lundgren, Appeal No. 2003-2088, 9 (BPAI Oct., 2005). The examiner's rejection under Section 101 in Lundgren was based solely on an alleged failure to be within the “technological arts.” Accordingly, the Board reversed the Section 101 rejection.

### **3.3. Each of Claims 291-298 and 300 Produces a Useful, Concrete and Tangible Result**

Examiner Young has expressly found that each one of Claims 291-298 and 300 produces a useful, concrete and tangible result. [Third Office Action, page 3].

### **3.4. Section 101 Rejection Must Be Reversed**

Examiner Young relies on the same and only basis that was expressly rejected by the Board in Lundgren—an alleged failure to comply with a separate “technological arts” test that has no legal basis.

Examiner Young’s rejection of Claims 291-298 and 300 under Section 101 must be reversed.

#### **4. Section 103(a)—Kepecs**

Each of the appealed claims (Claims 139-300) stands rejected under 35 U.S.C. § 103(a) as being obvious over Kepecs.

Examiner Young's Section 103(a) rejections based on the above grounds are argued separately for different claims rejected under Section 103(a). The claims for which separate arguments of patentability are provided (under separate subheadings) do not stand and fall together.

##### **4.1. Applicable Law**

###### **4.1.1. Prima facie burden**

The examiner bears the initial burden, on review of the prior art or on any other ground, of presenting a prima facie case of unpatentability. If examination at the initial stage does not produce a prima facie case of unpatentability, then without more the applicant is entitled to grant of the patent. In re Oetiker, 977 F.2d 1443, 1445, 24 U.S.P.Q.2D 1443, 1444 (Fed. Cir. 1992).

###### **4.1.2. Claim interpretation must be consistent with the specification**

During examination, claims are given their broadest reasonable interpretation that those skilled in the art would reach, consistent with the specification. In re Hyatt, 211 F.3d 1367, 1372, 54 U.S.P.Q.2D 1664, 1667 (Fed. Cir. 2000); In re Cortright, 165 F.3d 1353, 1359, 49 U.S.P.Q.2D 1464, 1468 (Fed. Cir. 1999). The "PTO applies to verbiage of the proposed claims the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the

written description contained in applicant's specification." In re Morris, 127 F.3d 1048, 1054-55, 44 U.S.P.Q.2D 1023, 1027 (Fed. Cir. 1997).

#### **4.1.3. Substantial evidence required for all factual findings**

The Board is not permitted to accept conclusory, unsupported findings made by the Primary Examiner that are not supported by substantial evidence made of record.

All findings of fact by the U.S. Patent and Trademark Office must be supported by substantial evidence within the record. In re Gartside, 203 F.3d 1305, 1315, 53 U.S.P.Q.2D 1769, 1775 (Fed. Cir. 2000).

The Supreme Court has described "substantial evidence" in the following manner:

substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. . . . Mere uncorroborated hearsay or rumor does not constitute substantial evidence.

Consolidated Edison Co. v. NLRB, 305 U.S. 197, 229, 83 L. Ed. 126, 59 S. Ct. 206 (1938); see also, Dickinson v. Zurko, 527 U.S. 150, 162, 50 U.S.P.Q.2D 1930, 1935, 144 L. Ed. 2d 143, 119 S. Ct. 1816 (1999) ("Zurko III").

"[R]eview under this standard involves an examination of the record as a whole, taking into consideration evidence that both justifies and detracts from the agency's decision." Universal Camera Corp. v. NLRB, 340 U.S. 474, 487-88, 95 L. Ed. 456, 71 S. Ct. 456 (1951); Zurko III, 527 U.S. at 162.

#### **4.1.4. Obviousness**

The examiner bears the initial burden of establishing a prima facie case of obviousness based upon the prior art. In re Fritch, 972 F.2d 1260, 1265, 23 U.S.P.Q.2D 1780, 1783 (Fed. Cir. 1992); Oetiker, 977 F.2d at 1445. In the absence of a proper prima facie case of obviousness, an applicant who complies

with the other statutory requirements is entitled to a patent. Oetiker, 977 F.2d at 1445.

To reject claims in an application under section 103, an examiner must show an unrebutted prima facie case of obviousness. In re Rouffet, 149 F.3d 1350, 1355, 47 U.S.P.Q.2D 1453, 1455 (Fed. Cir. 1998). The prima facie case is a procedural tool, and requires that the examiner initially produce evidence sufficient to support a ruling of obviousness; thereafter the burden shifts to the applicant to come forward with evidence or argument in rebuttal. In re Kumar, 418 F.3d 1361, 1366, 76 U.S.P.Q.2D 1048, 1050 (Fed. Cir. 2005). The patent applicant may attack the Examiner's prima facie determination as improperly made out, or the applicant may present objective evidence tending to support a conclusion of nonobviousness. Fritch, 972 F.2d at 1265. When rebuttal evidence is provided, the prima facie case dissolves, and the decision is made on the entirety of the evidence. Kumar, 418 F.3d at 1366; Oetiker, 977 F.2d at 1445.

In Graham v. John Deere Co., 383 U.S. 1, 148 U.S.P.Q. 459 (1966), the Supreme Court established the test for consideration and determination of obviousness under 35 U.S.C. § 103. In Iron Grip Barbell Co. v. USA Sports Inc., the Federal Circuit explained how obviousness must be determined using the four-part Graham test:

we employ the four-part test set forth in Graham v. John Deere Co., 383 U.S. 1 (1966). This test requires us to examine

- (1) the scope and content of the prior art;
- (2) the level of ordinary skill in the art;
- (3) the differences between the claimed invention and the prior art; and
- (4) the objective evidence of nonobviousness. *Id.* at 17-18; see also 35 U.S.C. § 103 (2000).

392 F.3d 1317, 1320, 73 U.S.P.Q.2D (BNA) 1225 (Fed Cir. 2004); see also, Rouffet, 149 F.3d at 1355. U.S. Patent and Trademark Office policy is also to follow Graham. Accordingly, examiners should apply the test for patentability under 35 U.S.C. § 103 as set forth in Graham. M.P.E.P. § 2141 “35 U.S.C. 103; the Graham Factual Inquiries”, p. 2100-120, 8<sup>th</sup> ed., Rev. 2 (May 2004). Accordingly, during examination an examiner must conduct the four factual inquiries enunciated in Graham in determining obviousness of any claim.

The underlying factual determinations on which a conclusion of obviousness is allegedly based are reviewed to ascertain whether they are supported by substantial evidence. In re Kumar, 418 F.3d at 1365 (citing Gartside, 203 F.3d at 1316). Unsupported assessments of the prior art are unacceptable for purposes of review. “Rather, the Board must point to some concrete evidence in the record in support of these findings. To hold otherwise would render the process of appellate review for substantial evidence on the record a meaningless exercise.” In re Zurko, 258 F.3d at 1385-86. “[D]eficiencies of the cited references cannot be remedied by the Board’s general conclusions about what is ‘basic knowledge’ or ‘common sense,’” nor may the Board simply reach conclusions based on its own understanding or experience. In re Zurko, 258 F.3d at 1385; Lee, 277 F.3d at 1344. “[T]he Board must not only assure that the requisite findings are made, based on evidence of record, but must also explain the reasoning by which the findings are deemed to support the agency’s conclusion.” Lee, 277 F.3d at 1344.

A determination of the level of ordinary skill in the art is an integral part of the Graham analysis. Ruiz v. A.B. Chance Co., 234 F.3d 654, 666, 57 U.S.P.Q.2D 1161, 1168 (Fed. Cir. 2000) (citing Custom Accessories Inc. v. Jeffrey-Allan Indus., Inc., 807 F.2d 955, 962, 1 U.S.P.Q.2D 1196, 1201 (Fed. Cir. 1986)). Ascertaining a level of ordinary skill in the art is necessary. M.P.E.P. § 2141.03.



In making the assessment of differences between the prior art and the claimed subject matter, Section 103 specifically requires consideration of the claimed invention “as a whole.” Princeton Biochemicals, Inc. v. Beckman Coulter, Inc., 411 F.3d 1332, 1337 75, U.S.P.Q.2D 1051, 1054 (Fed. Cir. 2005); Ruiz v. A.B. Chance Co., 357 F.3d 1270, 1275, 69 U.S.P.Q.2D 1686, 1690 (Fed. Cir. 2004). Inventions typically are new combinations of existing principles or features. Envtl. Designs, Ltd. v. Union Oil Co., 713 F.2d 693, 698, 218 U.S.P.Q. 865, 870 (Fed. Cir. 1983) (noting that “virtually all [inventions] are combinations of old elements”). The “as a whole” instruction in title 35 prevents evaluation of the invention part by part and requires a showing that an artisan of ordinary skill in the art at the time of invention, confronted by the same problems as the inventor and with no knowledge of the claimed invention, would have selected the various elements from the prior art and combined them in the claimed manner. Ruiz, 357 F.3d at 1275.

Whether a rejection is based on a purported combination of relevant teachings of separate references, or on a purported modification of the prior art, an examiner can satisfy the prima facie burden only by showing some objective teaching (either in the prior art or the knowledge generally available to one of ordinary skill) would lead to the purported combination or modification. Fritch, 972 F.2d at 1265-66; Rouffet, 149 F.3d at 1355-56. Also, where the examiner fails to explain the specific understanding or principle within the knowledge of a skilled artisan that would motivate one with no knowledge of the claimed invention to make an alleged combination of references, the court may infer that the examiner selected the references with the assistance of hindsight, which is forbidden. Lacking a motivation to combine, there is no prima facie case of obviousness. Rouffet, 149 F.3d at 1358. There must be some reason, suggestion, or motivation found in the prior art whereby a person of ordinary skill in the field of the

invention would make the combination. That knowledge cannot come from the applicant's invention itself. Oetiker, 977 F.2d at 1447.

“Recognition of an unsolved problem does not render the solution obvious.” Cardiac Pacemakers, Inc. v. St. Jude Medical, Inc., 381 F.3d 1371, 1377, 72 U.S.P.Q.2D 1333, 1337 (Fed. Cir. 2004) (“Recognition of a need does not render obvious the achievement that meets that need. There is an important distinction between the general motivation to cure an uncured disease (for example, the disease of multiple forms of heart irregularity), and the motivation to create a particular cure.”).

A “teaching or suggestion or motivation [to combine]” is an “essential evidentiary component of an obviousness holding.” C.R. Bard, Inc. v. M3 Sys., Inc., 157 F.3d 1340, 1352, 48 U.S.P.Q.2D 1225, 1232 (Fed. Cir. 1998). Evidence of a suggestion, teaching, or motivation to combine may flow from the prior art references themselves, the knowledge of one of ordinary skill in the art, or, in some cases, from the nature of the problem to be solved. In re Dembiczak, 175 F.3d 994, 999, 50 U.S.P.Q.2D 1614, 1617 (Fed. Cir. 1999); see also, e.g., Nat'l Steel Car, Ltd. v. Canadian Pac. Ry., Ltd., 357 F.3d 1319, 1337-39, 69 U.S.P.Q.2D 1641, 1655-56 (Fed. Cir. 2004) (finding that whether or not a drawing and disclosure had been disseminated to a sufficiently broad public so as to give either the status of a prior art reference, they (and corresponding witness testimony) were evidence relevant to whether a motivation to combine was implicit in the knowledge of one of ordinary skill in the relevant art).

“The range of sources available, however, does not diminish the requirement for actual evidence” showing the teaching or motivation to combine—“particular findings regarding the locus of the suggestion, teaching, or motivation to combine the prior art references” must be made. Dembiczak, 175 F.3d at 999-1000 (“Combining prior art references without evidence of such a suggestion, teaching,

or motivation simply takes the inventor's disclosure as a blueprint for piecing together the prior art to defeat patentability--the essence of hindsight."). See also, In re Kotzab, 217 F.3d 1365, 1371, 55 U.S.P.Q.2D 1313, 1317 (Fed. Cir. 2000) ("Whether the Board relies on an express or an implicit showing [of a teaching, motivation, or suggestion to combine or modify], it must provide particular findings related thereto.")

Any findings of prior knowledge in the field of the invention (including purported motivations to combine) must be supported by tangible teachings of materials made of record. Cardiac Pacemakers, 381 F.3d at 1376 ("Prior knowledge in the field of the invention must be supported by tangible teachings of reference materials "); Gambro Lundia AB v. Baxter Healthcare Corp., 110 F.3d 1573, 1578-79, 42 U.S.P.Q.2D 1378, 1383 (Fed. Cir. 1997) ("However, the record must provide a teaching, suggestion, or reason to substitute computer-controlled valves for the system of hoses in the prior art. The absence of such a suggestion to combine is dispositive in an obviousness determination.").

#### **4.2. Claims 295-299**

Claim 295 is independent. Claims 296-299 depend from Claim 295. All of the arguments discussed below with respect to Claim 295 are equally applicable to each of Claims 296-299.

Substantial evidence is required of all factual findings. Absent substantial evidence, no prima facie case of obviousness exists.

The rejection of Claim 295 is flawed because Examiner Young has not made a prima facie case of obviousness:

- Examiner Young has ignored and failed to establish with substantial evidence that the claimed subject matter of *purchasing a plurality of unlock codes, each unlock code being associated with an identifier that identifies a respective lottery outcome*, was known at the time of invention
- Examiner Young has ignored and failed to establish with substantial evidence that the claimed subject matter of *receiving, by a device of the retailer from a device of a user, an identifier that identifies a lottery outcome that is locked*, was known at the time of invention
- Examiner Young does not provide any evidence of a motivation known to one of ordinary skill in the art to provide for any of the above claimed features
- Examiner Young has otherwise failed to provide substantial evidence of record establishing that it would have been obvious to provide specifically for the method of Claim 295

##### **4.2.1. Examiner's Findings**

Examiner Young's findings with respect to Claim 295 are confusing to the point of obfuscation.

Specifically, the Examiner asserts that the rejection of Claim 295 is based on “substantially the same reasons as the rejections of claim 294 & claim 269....” [Third Office Action, page 41]. The cross-references to Claims 294 and 269 presumably incorporate arguments made by Examiner Young with respect to all of the following claims: Claims 139, 147, 164, 165, 166, 167, 191, 192, and 197. As discussed below, even if the Examiner’s findings with respect to Claims 294 and 269 were supported by the evidence of record (which Appellants dispute), those findings could not support a rejection of Claim 295.

The Examiner also purports to base the Section 103(a) rejection somehow on the alleged “degree of repetition and multiplicity...[of the] unreasonable number of claims....” [Third Office Action, page 41 (citing MPEP § 2173.05(n))].

**4.2.2. MPEP § 2173.05(n) is Not a Proper Basis for a Section 103(a) Rejection**

MPEP § 2173.05(n) allows for a rejection under Section 112, second paragraph, for undue multiplicity and requires the Examiner to require from Applicants a selection of a specified number of claims for purpose of examination. MPEP § 2173.05(n) does not have anything to do with a Section 103(a) rejection. The Examiner also never specified a number of claims nor identified a rejection of any claim under Section 112, second paragraph. Examiner Young also admitted that it appears that Examiner Young did not follow proper PTO procedure by invoking MPEP § 2173.05(n) as a basis for a Section 103(a) rejection: “The Examiner advised that it appears that the prior Office action did not follow the guidelines [sic] of MPEP 2173.05(n) concerning the rejections of said claims...and the Examiner also advised that the subsequent Office action responding to said request for reconsideration would NOT be made a final Office action.” [Interview Summary, page 3].

**4.2.3. Examiner's Findings are Not Supported by Substantial Evidence of Record**

The record cannot support the Examiner's rejection of Claim 295 as obvious in light of Kepecs.

Kepecs is devoid of any hint of *purchasing a plurality of unlock codes*. Examiner Young failed to address any subject matter related to the purchasing of an unlock code. The rejections of Claims 139, 147, 164, 165, 166, 167, 191, 192, and 197 do not address purchasing an unlock code. The actual evidence of record cannot support any assertion that *purchasing a plurality of unlock codes* was known or desirable to one of ordinary skill in the art. Examiner Young has failed to establish a prima facie case of obviousness of Claim 295 for at least this reason.

Kepecs is further devoid of any hint of *each unlock code being associated with an identifier that identifies a respective lottery outcome*. Examiner Young failed to address any subject matter related to a lottery outcome. The rejections of Claims 139, 147, 164, 165, 166, 167, 191, 192, and 197 do not address lottery outcomes or purchased unlock codes being associated with identifiers that identify respective lottery outcomes. Examiner Young has failed to establish a prima facie case of obviousness of Claim 295 for at least this reason.

Kepecs is further devoid of any hint of *receiving, by a device of the retailer from a device of a user, an identifier that identifies a lottery outcome that is locked*. Examiner Young failed to address any subject matter related to a lottery outcome that is locked. The rejections of Claims 139, 147, 164, 165, 166, 167, 191, 192, and 197 do not address lottery outcomes or purchased unlock codes being associated with identifiers that identify respective lottery outcomes. Examiner Young has failed to establish a prima facie case of obviousness of Claim 295 for at least this reason.

**4.2.4. No Substantial Evidence of a Proper Motivation to Modify any Teaching of Kepecs**

As discussed above, Examiner Young has failed to indicate properly any actual evidence in support of Examiner Young's assertions with respect to the purchasing of unlock codes or with respect to lottery outcomes.

Examiner Young has found one motivation ("Examiner Young's Universal Motivation") that allegedly would have suggested every purported modification of the teachings of Kepecs in a manner that would (allegedly) have provided for all of the specific subject matter of every claim:

because modification of the interpretation of the cited disclosure of Kepecs would have provided means to "direct appropriate discounts or other promotions...toward the individual consumer, yet the anonymity of the consumer is preserved..." (see Kepecs (col. 2, ll. 12-18)) based on the motivation to modify Kepecs so as to provide a system that "is highly resistant to fraud..." (see Kepecs (col. 2, ll. 18-22)).

[See, Third Office Action, pages 5, 7, 9, 11, 12, 13, 14, 17, 18, 20, 23-24, 24-25, 27, 27-28, 28, 29-30, 30, 32, 41-42, and 43].

In other words, regardless of the actual claimed subject matter, Examiner Young regards every claim as an obvious modification of Kepecs based on general teachings of the desirability of (1) preserving the anonymity of a consumer, (2) resisting fraud, and (3) directing appropriate discounts or other promotions toward individual consumers.

Examiner Young's Universal Motivation does not suggest the desirability of either purchasing unlock codes or lottery outcomes. Nothing in Kepecs or otherwise of record suggests that it would have been desirable to provide specifically for the purchasing of unlock codes, much less the unlock codes explicitly recited in Claim 295.

Examiner Young's Universal Motivation clearly fails to establish a prima facie case of obviousness. Examiner Young articulates no reasoning why the desirability of resisting fraud, facilitating anonymity, or directing appropriate discounts would specifically suggest the desirability of purchasing unlock codes or of lottery outcomes. "Recognition of a need does not render obvious the achievement that meets that need." Cardiac Pacemakers, 381 F.3d at 1377 (stating there "is an important distinction between the general motivation to cure an uncured disease (for example, the disease of multiple forms of heart irregularity), and the motivation to create a particular cure.").

Examiner Young has not made the requisite showing, based on actual evidence, that one of ordinary skill in the art would have been prompted to modify the teachings of Kepecs in the manner suggested by Examiner Young to provide specifically for all of the claimed subject matter of Claim 295. Examiner Young has failed to establish a prima facie case of obviousness for at least this reason.

#### **4.2.5. Conclusion**

To the extent that Examiner Young is relying solely upon Kepecs in support of an assertion that all of the claimed subject matter of Claims 295-299 was known and obvious to provide for, the Section 103(a) rejection cannot stand. Examiner Young has failed otherwise to indicate substantial evidence in support of Examiner Young's assertions as to what was known (including the asserted motivation), and those assertions, even if true, could not support an obviousness rejection. Accordingly, the Examiner has failed to establish a prima facie case of obviousness for any of Claims 295-299. Appellants request reversal of the Section 103(a) rejection of Claims 295-299.



#### 4.3. Claims 291-294

Claim 291 is independent. Claims 292-294 depend from Claim 291. All of the arguments discussed below with respect to Claim 291 are equally applicable to each of Claims 292-294.

Substantial evidence is required of all factual findings. Absent substantial evidence, no prima facie case of obviousness exists.

The rejection of Claim 291 is flawed because Examiner Young has not made a prima facie case of obviousness:

transmitting at least one of the plurality of unlock codes to a merchant, in which the user is not the same as the merchant; and receiving, from the user, an indication of at least one of the at least one unlock codes transmitted to the merchant.

- Examiner Young has ignored and failed to establish with substantial evidence that the claimed subject matter of *transmitting at least one of the plurality of unlock codes to a merchant, in which the user is not the same as the merchant*, was known at the time of invention
- Examiner Young has ignored and failed to establish with substantial evidence that the claimed subject matter of *receiving, from the user, an indication of at least one of the at least one unlock codes transmitted to the merchant*, was known at the time of invention
- Examiner Young does not provide any evidence of a motivation known to one of ordinary skill in the art to provide for any of the above claimed features
- Examiner Young has otherwise failed to provide substantial evidence of record establishing that it would have been obvious to provide specifically for the method of Claim 291

#### **4.3.1. Examiner's Findings**

Examiner Young's findings with respect to Claim 291 are confusing to the point of obfuscation.

Specifically, the Examiner asserts that the rejection of Claim 291 is based on "substantially the same reasons as the rejections of claim 163, claim 197, claims 201 through 216...." [Third Office Action, page 40]. The cross-references to Claims 163, 197, and all of claims 201-216 presumably incorporate arguments made by Examiner Young with respect to all of the following claims: Claims 139, 165, 166, 167, and 197. As discussed below, even if the Examiner's findings with respect to Claims 139, 165, 166, 167, and 197 were supported by the evidence of record (which Appellants dispute), those findings could not support a rejection of Claim 291.

The Examiner also purports to base the Section 103(a) rejection somehow on the alleged "degree of repetition and multiplicity...[of the] unreasonable number of claims...." [Third Office Action, page 41 (citing MPEP § 2173.05(n))].

#### **4.3.2. MPEP § 2173.05(n) is Not a Proper Basis for a Section 103(a) Rejection**

The impropriety of MPEP § 2173.05(n) as support for a Section 103(a) rejection is addressed above with respect to Claim 295. Examiner Young never asserted that any claim is rejected under Section 112, second paragraph, for undue multiplicity, or specified a number of claims to which Appellants would be limited.

#### **4.3.3. Examiner's Findings are Not Supported by Substantial Evidence of Record**

The record cannot support the Examiner's rejection of Claim 291 as obvious in light of Kepecs.

Kepecs is devoid of any hint of *receiving, from the user, an indication of at least one of the at least one unlock codes transmitted to the merchant*. Examiner

Young failed to address any subject matter related to the purchasing of an unlock code. The rejections of Claims 139, 165, 166, 167, and 197 do not address such a feature or relate to anything transmitted to a merchant. The actual evidence of record cannot support any assertion that *receiving, from the user, an indication of at least one of the at least one unlock codes transmitted to the merchant* was known or desirable to one of ordinary skill in the art. Examiner Young has failed to establish a prima facie case of obviousness of Claim 291 for at least this reason.

Kepecs is further devoid of any hint of *transmitting at least one of the plurality of unlock codes to a merchant, in which the user is not the same as the merchant*. Examiner Young failed to address any subject matter related to a lottery outcome. The rejections of Claims 139, 165, 166, 167, and 197 do not transmitting unlock codes to a merchant. Examiner Young has failed to establish a prima facie case of obviousness of Claim 291 for at least this reason.

#### **4.3.4. No Substantial Evidence of a Proper Motivation to Modify any Teaching of Kepecs**

As discussed above, Examiner Young has failed to indicate properly any actual evidence in support of Examiner Young's assertions with respect to the transmitting of unlock codes to a merchant or receiving such an unlock code from a user.

Examiner Young's Universal Motivation does not suggest the desirability of such features. Nothing in Kepecs or otherwise of record suggests that it would have been desirable to provide specifically for transmitting an unlock code to a merchant, much less receiving that unlock code from a user.

Examiner Young's Universal Motivation clearly fails to establish a prima facie case of obviousness. Examiner Young articulates no reasoning why the desirability of resisting fraud, facilitating anonymity, or directing appropriate discounts would specifically suggest the desirability of the above features. Even if

the claimed subject matter meets the needs recited by the Examiner, “[r]ecognition of a need does not render obvious the achievement that meets that need.” Cardiac Pacemakers, 381 F.3d at 1377.

Examiner Young has not made the requisite showing, based on actual evidence, that one of ordinary skill in the art would have been prompted to modify the teachings of Kepecs in the manner suggested by Examiner Young to provide specifically for all of the claimed subject matter of Claim 291. Examiner Young has failed to establish a prima facie case of obviousness for at least this reason.

#### **4.3.5. Conclusion**

To the extent that Examiner Young is relying solely upon Kepecs in support of an assertion that all of the claimed subject matter of Claims 291-294 was known and obvious to provide for, the Section 103(a) rejection cannot stand. Examiner Young has failed otherwise to indicate substantial evidence in support of Examiner Young’s assertions as to what was known (including the asserted motivation), and those assertions, even if true, could not support an obviousness rejection. Accordingly, the Examiner has failed to establish a prima facie case of obviousness for any of Claims 291-294. Appellants request reversal of the Section 103(a) rejection of Claims 291-294.

#### **4.4. Claim 292**

Claim 292 depends from Claim 291 and is allowable for at least the arguments provided with respect to Claim 291, which are incorporated in this section.

Further, the Examiner has ignored the subject matter of selling the at least one of the plurality of unlock codes to the merchant.

Examiner Young asserts that Claim 292 is “rejected for at least substantially the same reasons as the rejections for claim 291 & claim 269....” [Third Office Action, page 40].

Nothing in the discussion of Claims 291 or Claim 269, however, actually addresses the recited limitation of selling the at least one of the plurality of unlock codes to the merchant. The Examiner articulates no reasoning why Kepecs (or any other evidence of record) would suggest selling the at least one of the plurality of unlock codes to the merchant. Examiner Young has failed to establish a prima facie case of obviousness for at least this reason.

There is no evidence of record that it would have been desirable to provide for selling the at least one of the plurality of unlock codes to the merchant would have been known at the time of invention. Examiner Young has failed to establish a prima facie case of obviousness for at least this reason.

Appellants request the reversal of the Section 103(a) rejection of Claim 292.

#### **4.5. Claim 293**

Claim 293 depends from Claim 291 and is allowable for at least the arguments provided with respect to Claim 291, which are incorporated in this section.

Further, the Examiner has ignored the subject matter of selling the at least one of the plurality of locked outcomes to the user.

Examiner Young asserts that Claim 293 is “rejected for at least substantially the same reasons as the rejections for claim 291 & claim 269....” [Third Office Action, page 40].

Nothing in the discussion of Claims 291 or Claim 269, however, actually addresses the recited limitation of selling the at least one of the plurality of locked outcomes to the user. The Examiner articulates no reasoning why Kepecs (or any other evidence of record) would suggest selling the at least one of the plurality of locked outcomes to the user. Examiner Young has failed to establish a prima facie case of obviousness for at least this reason.

There is no evidence of record that it would have been desirable to provide for selling the at least one of the plurality of locked outcomes to the user. Examiner Young has failed to establish a prima facie case of obviousness for at least this reason.

Appellants request the reversal of the Section 103(a) rejection of Claim 293.

#### **4.6. Claim 300**

Claim 300 is independent.

Substantial evidence is required of all factual findings. Absent substantial evidence, no prima facie case of obviousness exists.

The rejection of Claim 300 is flawed because Examiner Young has not made a prima facie case of obviousness:

- Examiner Young has ignored and failed to establish with substantial evidence that the claimed subject matter of *receiving payment for said indication of said unlock code*, was known at the time of invention
- Examiner Young has ignored and failed to establish with substantial evidence that the claimed subject matter of *providing an indication of said unlock code to an intermediary device in exchange for the payment*, was known at the time of invention
- Examiner Young does not provide any evidence of a motivation known to one of ordinary skill in the art to provide for any of the above claimed features
- Examiner Young has otherwise failed to provide substantial evidence of record establishing that it would have been obvious to provide specifically for the method of Claim 300

##### **4.6.1. Examiner's Findings**

Examiner Young asserts that the rejection of Claim 300 is based on “substantially the same reasons as the rejections for claim 290....” [Third Office Action, page 44]. The cross-reference to Claim 290 presumably incorporates (as traced back through a chain of such cross-references) arguments made by Examiner Young with respect to Claim 253. As discussed below, even if the

Examiner's findings with respect to Claim 253 were supported by the evidence of record (which Appellants dispute), those findings could not support a rejection of Claim 300.

The Examiner also purports to base the Section 103(a) rejection somehow on the alleged "degree of repetition and multiplicity...[of the] unreasonable number of claims...." [Third Office Action, page 41 (citing MPEP § 2173.05(n))].

**4.6.2. MPEP § 2173.05(n) is Not a Proper Basis for a Section 103(a) Rejection**

The impropriety of MPEP § 2173.05(n) as support for a Section 103(a) rejection is addressed above with respect to Claim 295. Examiner Young never asserted that any claim is rejected under Section 112, second paragraph, for undue multiplicity, or specified a number of claims to which Appellants would be limited.

**4.6.3. Examiner's Findings are Not Supported by Substantial Evidence of Record**

The record cannot support the Examiner's rejection of Claim 300 as obvious in light of Kepecs.

Kepecs is devoid of any hint of *receiving payment for said indication of said unlock code*. Examiner Young failed to address any subject matter related to receiving payment for an indication of an unlock code. The rejection of Claim 253 does not address receiving such a payment. The actual evidence of record cannot support any assertion that *receiving payment for said indication of said unlock code* was known or desirable to one of ordinary skill in the art. Examiner Young has failed to establish a prima facie case of obviousness of Claim 300 for at least this reason.

Kepecs is similarly devoid of any hint of *providing an indication of said unlock code to an intermediary device in exchange for the payment*. Examiner Young failed to address any subject matter related to providing such an indication



in exchange for a payment. The rejection of Claim 253 does not address this subject matter. Examiner Young has failed to establish a prima facie case of obviousness of Claim 300 for at least this reason.

**4.6.4. No Substantial Evidence of a Proper Motivation to Modify any Teaching of Kepecs**

As discussed above, Examiner Young has failed to indicate properly any actual evidence in support of Examiner Young's assertions with respect to payment in exchange for an indication of an unlock code.

Examiner Young's Universal Motivation does not suggest the desirability of payment in exchange for an indication of an unlock code. Nothing in Kepecs or otherwise of record suggests that it would have been desirable to provide specifically for providing an indication of an unlock code in exchange for a payment.

Examiner Young's Universal Motivation clearly fails to establish a prima facie case of obviousness. Examiner Young articulates no reasoning why the desirability of resisting fraud, facilitating anonymity, or directing appropriate discounts would specifically suggest the desirability of providing an indication of an unlock code in exchange for a payment. Even if the claimed subject matter meets the needs recited by the Examiner, "[r]ecognition of a need does not render obvious the achievement that meets that need." Cardiac Pacemakers, 381 F.3d at 1377.

Examiner Young has not made the requisite showing, based on actual evidence, that one of ordinary skill in the art would have been prompted to modify the teachings of Kepecs in the manner suggested by Examiner Young to provide specifically for all of the claimed subject matter of Claim 300. Examiner Young has failed to establish a prima facie case of obviousness for at least this reason.

#### **4.6.5.        Conclusion**

To the extent that Examiner Young is relying solely upon Kepecs in support of an assertion that all of the claimed subject matter of Claim 300 was known and obvious to provide for, the Section 103(a) rejection cannot stand. Examiner Young has failed otherwise to indicate substantial evidence in support of Examiner Young's assertions as to what was known (including the asserted motivation), and those assertions, even if true, could not support an obviousness rejection. Accordingly, the Examiner has failed to establish a prima facie case of obviousness for Claim 300. Appellants request reversal of the Section 103(a) rejection of Claim 300.

#### **4.7. Claim 289**

Claim 289 is independent.

Substantial evidence is required of all factual findings. Absent substantial evidence, no prima facie case of obviousness exists.

The rejection of Claim 289 is flawed because Examiner Young has not made a prima facie case of obviousness:

- Examiner Young has failed to establish with substantial evidence that the claimed subject matter of *receiving at least one unlock code upon satisfying at least one of said at least one qualifying action and using at least one unlock code to unlock at least one of said at least one outcome* was known at the time of invention
- Examiner Young does not provide any evidence of a motivation known to one of ordinary skill in the art to provide for any of the above claimed features
- Examiner Young has otherwise failed to provide substantial evidence of record establishing that it would have been obvious to provide specifically for the method of Claim 289

##### **4.7.1. Examiner's Findings**

Examiner Young asserts that the rejection of Claim 289 is based on “substantially the same reasons as the rejections for claim 288....” [Third Office Action, page 39]. The cross-reference to Claim 288 presumably incorporates (as traced back through a chain of such cross-references) arguments made by Examiner Young with respect to Claim 253. As discussed below, even if the Examiner’s findings with respect to Claim 253 were supported by the evidence of

record (which Appellants dispute), those findings could not support a rejection of Claim 289.

The Examiner also purports to base the Section 103(a) rejection somehow on the alleged “degree of repetition and multiplicity...[of the] unreasonable number of claims....” [Third Office Action, page 41 (citing MPEP § 2173.05(n))].

**4.7.2. MPEP § 2173.05(n) is Not a Proper Basis for a Section 103(a) Rejection**

The impropriety of MPEP § 2173.05(n) as support for a Section 103(a) rejection is addressed above with respect to Claim 295. Examiner Young never asserted that any claim is rejected under Section 112, second paragraph, for undue multiplicity, or specified a number of claims to which Appellants would be limited.

**4.7.3. Examiner’s Findings are Not Supported by Substantial Evidence of Record**

The record cannot support the Examiner’s rejection of Claim 289 as obvious in light of Kepecs.

The Examiner does not address anything related to qualifying actions in the rejection of Claim 253, which is the sole basis for rejecting Claim 289. Accordingly, the Examiner has failed to articulate any clear and reasoned finding, based on actual evidence of record, that could support a prima facie case of obviousness.

Kepecs does not teach or suggest *said at least one qualifying action associated with at least one unlock code*. Accordingly, Kepecs does not teach or suggest *receiving at least one unlock code upon satisfying at least one of said at least one qualifying action*. Examiner Young has failed to establish a prima facie case of obviousness for at least this reason.

Examiner Young does not even attempt to provide any rationale in support of this finding. Examiner Young has failed to establish a prima facie case of

obviousness for at least this failure to provide a clear and particular finding supported by substantial evidence of record.

Despite the express requirements of Graham, Examiner Young does not even attempt to define the level of ordinary skill in the art, and thus any assertions as to what would have been implicitly suggested to one of ordinary skill in the art are unsupported and suspect. Examiner Young has failed to establish a prima facie case of obviousness for at least this reason.

**4.7.4. No Substantial Evidence of a Proper Motivation to Modify any Teaching of Kepecs**

Examiner Young has failed to indicate properly any actual evidence in support of Examiner Young's assertions with respect to various claimed subject matter of Claim 289.

Examiner Young's Universal Motivation does not suggest the desirability of associating a qualifying action with an unlock code. Nothing in Kepecs or otherwise of record suggests that it would have been desirable to provide specifically for providing for such features.

Examiner Young's Universal Motivation clearly fails to establish a prima facie case of obviousness. Examiner Young articulates no reasoning why the desirability of resisting fraud, facilitating anonymity, or directing appropriate discounts would specifically suggest the desirability of the claimed features of Claim 289.

Examiner Young has not made the requisite showing, based on actual evidence, that one of ordinary skill in the art would have been prompted to provide specifically for all of the claimed subject matter of Claim 289. Examiner Young has failed to establish a prima facie case of obviousness for at least this reason.

#### **4.7.5. Conclusion**

To the extent that Examiner Young is relying solely upon Kepecs in support of an assertion that all of the claimed subject matter of Claim 289 was known and obvious to provide for, the Section 103(a) rejection cannot stand. Examiner Young has failed otherwise to indicate substantial evidence in support of Examiner Young's assertions as to what was known (including the asserted motivation), and those assertions, even if true, could not support an obviousness rejection. Accordingly, the Examiner has failed to establish a prima facie case of obviousness for Claim 289. Appellants request reversal of the Section 103(a) rejection of Claim 289.

#### **4.8. Claim 288**

Claim 288 is independent.

Substantial evidence is required of all factual findings. Absent substantial evidence, no prima facie case of obviousness exists.

The rejection of Claim 288 is flawed because Examiner Young has not made a prima facie case of obviousness:

- Examiner Young has failed to establish with substantial evidence that the claimed subject matter of *receiving at least one unlock code upon satisfying at least one of said at least one qualifying action and using at least one unlock code to unlock at least one of said at least one outcome* was known at the time of invention
- Examiner Young has ignored and failed to establish with substantial evidence that the claimed subject matter of *sending at least one redemption request upon unlocking of one at least one of said at least one outcome*, was known at the time of invention
- Examiner Young does not provide any evidence of a motivation known to one of ordinary skill in the art to provide for any of the above claimed features
- Examiner Young has otherwise failed to provide substantial evidence of record establishing that it would have been obvious to provide specifically for the method of Claim 288

##### **4.8.1. Examiner's Findings**

Examiner Young asserts that the rejection of Claim 288 is based on “substantially the same reasons as the rejections for claim 256....” [Third Office Action, page 39]. The cross-reference to Claim 256 presumably incorporates (as

traced back through a chain of such cross-references) arguments made by Examiner Young with respect to Claim 253. As discussed below, even if the Examiner's findings with respect to Claim 253 were supported by the evidence of record (which Appellants dispute), those findings could not support a rejection of Claim 288.

The Examiner also purports to base the Section 103(a) rejection somehow on the alleged "degree of repetition and multiplicity...[of the] unreasonable number of claims...." [Third Office Action, page 41 (citing MPEP § 2173.05(n))].

**4.8.2. MPEP § 2173.05(n) is Not a Proper Basis for a Section 103(a) Rejection**

The impropriety of MPEP § 2173.05(n) as support for a Section 103(a) rejection is addressed above with respect to Claim 295. Examiner Young never asserted that any claim is rejected under Section 112, second paragraph, for undue multiplicity, or specified a number of claims to which Appellants would be limited.

**4.8.3. Examiner's Findings are Not Supported by Substantial Evidence of Record**

The record cannot support the Examiner's rejection of Claim 288 as obvious in light of Kepecs.

The Examiner does not address anything related to qualifying actions in the rejection of Claim 253, which is the sole basis for rejecting Claim 288. Accordingly, the Examiner has failed to articulate any clear and reasoned finding, based on actual evidence of record, that could support a prima facie case of obviousness.

Kepecs does not teach or suggest *said at least one qualifying action associated with at least one unlock code*. Accordingly, Kepecs does not teach or suggest *receiving at least one unlock code upon satisfying at least one of said at*



*least one qualifying action.* Examiner Young has failed to establish a prima facie case of obviousness for at least this reason.

Kepecs does not teach or suggest *sending at least one redemption request upon unlocking of one at least one of said at least one outcome.* The Examiner ignores this limitation. Examiner Young has failed to establish a prima facie case of obviousness for at least this reason.

Examiner Young does not even attempt to provide any rationale in support of this finding. Examiner Young has failed to establish a prima facie case of obviousness for at least this failure to provide a clear and particular finding supported by substantial evidence of record.

Despite the express requirements of Graham, Examiner Young does not even attempt to define the level of ordinary skill in the art, and thus any assertions as to what would have been implicitly suggested to one of ordinary skill in the art are unsupported and suspect. Examiner Young has failed to establish a prima facie case of obviousness for at least this reason.

#### **4.8.4. No Substantial Evidence of a Proper Motivation to Modify any Teaching of Kepecs**

Examiner Young has failed to indicate properly any actual evidence in support of Examiner Young's assertions with respect to various claimed subject matter of Claim 288.

Examiner Young's Universal Motivation does not suggest the desirability of associating a qualifying action with an unlock code or sending a redemption request upon unlocking an outcome. Nothing in Kepecs or otherwise of record suggests that it would have been desirable to provide specifically for providing for such features.

Examiner Young's Universal Motivation clearly fails to establish a prima facie case of obviousness. Examiner Young articulates no reasoning why the

desirability of resisting fraud, facilitating anonymity, or directing appropriate discounts would specifically suggest the desirability of the claimed features of Claim 288.

Examiner Young has not made the requisite showing, based on actual evidence, that one of ordinary skill in the art would have been prompted to provide specifically for all of the claimed subject matter of Claim 288. Examiner Young has failed to establish a prima facie case of obviousness for at least this reason.

#### **4.8.5. Conclusion**

To the extent that Examiner Young is relying solely upon Kepecs in support of an assertion that all of the claimed subject matter of Claim 288 was known and obvious to provide for, the Section 103(a) rejection cannot stand. Examiner Young has failed otherwise to indicate substantial evidence in support of Examiner Young's assertions as to what was known (including the asserted motivation), and those assertions, even if true, could not support an obviousness rejection. Accordingly, the Examiner has failed to establish a prima facie case of obviousness for Claim 288. Appellants request reversal of the Section 103(a) rejection of Claim 288.

#### **4.9. Claim 290**

Claim 290 is independent.

Substantial evidence is required of all factual findings. Absent substantial evidence, no prima facie case of obviousness exists.

The rejection of Claim 290 is flawed because Examiner Young has not made a prima facie case of obviousness:

- Examiner Young has failed to establish with substantial evidence that the claimed combination of subject matter of *receiving an indication of at least one qualifying action, said at least one qualifying action associated with at least one outcome and receiving at least one outcome upon satisfying at least one of said at least one qualifying actions* was known at the time of invention
- Examiner Young does not provide any evidence of a motivation known to one of ordinary skill in the art to provide for any of the above claimed features
- Examiner Young has otherwise failed to provide substantial evidence of record establishing that it would have been obvious to provide specifically for the method of Claim 290

##### **4.9.1. Examiner's Findings**

Examiner Young asserts that the rejection of Claim 290 is based on “substantially the same reasons as the rejections for claim 289....” [Third Office Action, page 39]. The cross-reference to Claim 289 presumably incorporates (as traced back through a chain of such cross-references) arguments made by Examiner Young with respect to Claim 253. As discussed below, even if the Examiner’s findings with respect to Claim 253 were supported by the evidence of

record (which Appellants dispute), those findings could not support a rejection of Claim 290.

The Examiner also purports to base the Section 103(a) rejection somehow on the alleged “degree of repetition and multiplicity...[of the] unreasonable number of claims....” [Third Office Action, page 41 (citing MPEP § 2173.05(n))].

**4.9.2. MPEP § 2173.05(n) is Not a Proper Basis for a Section 103(a) Rejection**

The impropriety of MPEP § 2173.05(n) as support for a Section 103(a) rejection is addressed above with respect to Claim 295. Examiner Young never asserted that any claim is rejected under Section 112, second paragraph, for undue multiplicity, or specified a number of claims to which Appellants would be limited.

**4.9.3. Examiner’s Findings are Not Supported by Substantial Evidence of Record**

The record cannot support the Examiner’s rejection of Claim 290 as obvious in light of Kepecs.

The Examiner does not address anything related to qualifying actions in the rejection of Claim 253, which is the sole basis for rejecting Claim 290. Accordingly, the Examiner has failed to articulate any clear and reasoned finding, based on actual evidence of record, that could support a prima facie case of obviousness.

Kepecs does not teach or suggest *receiving an indication of at least one qualifying action, said at least one qualifying action associated with at least one outcome and receiving at least one outcome upon satisfying at least one of said at least one qualifying actions*. The Examiner has ignored this combination of recited subject matter—it is not addressed at all in the rejection of Claim 253 (the sole basis for rejecting Claim 290). Examiner Young has failed to establish a prima facie case of obviousness for at least this reason.

Examiner Young does not even attempt to provide any rationale in support of the rejection of Claim 290. Examiner Young has failed to establish a prima facie case of obviousness for at least this failure to provide a clear and particular finding supported by substantial evidence of record.

Despite the express requirements of Graham, Examiner Young does not even attempt to define the level of ordinary skill in the art, and thus any assertions as to what would have been implicitly suggested to one of ordinary skill in the art are unsupported and suspect. Examiner Young has failed to establish a prima facie case of obviousness for at least this reason.

**4.9.4. No Substantial Evidence of a Proper Motivation to Modify any Teaching of Kepecs**

Examiner Young has failed to indicate properly any actual evidence in support of Examiner Young's assertions with respect to various claimed subject matter of Claim 290.

Examiner Young's Universal Motivation does not suggest the desirability of *receiving at least one outcome upon satisfying at least one of said at least one qualifying actions*. Nothing in Kepecs or otherwise of record suggests that it would have been desirable to provide specifically for providing for such features.

Examiner Young's Universal Motivation clearly fails to establish a prima facie case of obviousness. Examiner Young articulates no reasoning why the desirability of resisting fraud, facilitating anonymity, or directing appropriate discounts would specifically suggest the desirability of the claimed features of Claim 290.

Examiner Young has not made the requisite showing, based on actual evidence, that one of ordinary skill in the art would have been prompted to provide specifically for all of the claimed subject matter of Claim 290. Examiner Young has failed to establish a prima facie case of obviousness for at least this reason.

#### **4.9.5.        Conclusion**

To the extent that Examiner Young is relying solely upon Kepecs in support of an assertion that all of the claimed subject matter of Claim 290 was known and obvious to provide for, the Section 103(a) rejection cannot stand. Examiner Young has failed otherwise to indicate substantial evidence in support of Examiner Young's assertions as to what was known (including the asserted motivation), and those assertions, even if true, could not support an obviousness rejection. Accordingly, the Examiner has failed to establish a prima facie case of obviousness for Claim 290. Appellants request reversal of the Section 103(a) rejection of Claim 290.

#### **4.10. Claims 147-150 and 259-276**

Each of Claims 147-150 and 259 is independent. Claims 148-150 are directed to respective statutory classes and contain limitations similar to those of Claim 147. Claim 259 provides for functionality similar to Claim 147. Claims 260-276 depend from Claim 259. All of the arguments discussed below with respect to Claim 147 are equally applicable to each of Claims 148-150 and 259-276.

Substantial evidence is required of all factual findings. Absent substantial evidence, no prima facie case of obviousness exists.

The rejection of Claim 147 is flawed because Examiner Young has not made a prima facie case of obviousness:

- Examiner Young has failed to establish with substantial evidence that the claimed subject matter of *associate a qualifying action with said unlock code*, was known at the time of invention
- Examiner Young has failed to establish with substantial evidence that the claimed subject matter of *provide an indication of said unlock code upon a completion of said qualifying action*, was known at the time of invention
- Examiner Young does not provide any evidence of a motivation known to one of ordinary skill in the art to provide for any of the above claimed features
- Examiner Young has otherwise failed to provide substantial evidence of record establishing that it would have been obvious to provide specifically for the system of Claim 147

#### **4.10.1. Examiner's Findings**

Examiner Young finds: “Kepecs at least at (col. 5, ll. 37-41) discloses: ‘requirements to purchase other items to qualify for the discount...and time of expiration of the discounts.’” [Third Office Action, page 8].

Examiner Young finds: “Kepecs lacks explicit recital of ‘a qualifying action....’” [Third Office Action, page 8].

Examiner Young further finds:

Kepecs at least at (col. 2, ll. 65-67; and col. 3; ll. 1-42) discloses: “a unique identifying key (ID) is associated with each consumer account. The account may be established by a registration process.... Upon purchase of items.... The Examiner interprets at least these disclosures of “requirements to purchase other items to qualify for the discount...and time of expiration of the discounts....”; “registration process” and “upon purchase of items at the associated store...” as implicitly showing “a qualifying action....” [Third Office Action, page 8].

#### **4.10.2. Examiner's Findings are Not Supported by Substantial Evidence of Record**

The record cannot support the Examiner's rejection of Claim 147 as obvious in light of Kepecs.

Examiner Young concedes that Kepecs does not explicitly teach *associate a qualifying action with said unlock code*. Examiner Young thus also concedes that Kepecs cannot teach *provide an indication of said unlock code upon a completion of said qualifying action*.

Examiner Young argues that Kepecs somehow “implicitly” teaches the above features, but does not even attempt to provide any rationale in support of this finding. Examiner Young has failed to establish a prima facie case of obviousness for at least this failure to provide a clear and particular finding supported by substantial evidence of record.



Despite the express requirements of Graham, Examiner Young does not even attempt to define the level of ordinary skill in the art, and thus any assertions as to what would have been implicitly suggested to one of ordinary skill in the art are unsupported and suspect. Examiner Young has failed to establish a prima facie case of obviousness for at least this reason.

Further, Examiner Young does not even attempt to explain, for example, how one of ordinary skill in the art (who has not been defined) would have interpreted the brief reference to “a registration process” as somehow suggesting either *associate a qualifying action with said unlock code*, much less *provide an indication of said unlock code upon a completion of said qualifying action*. Without objective evidence in support, Examiner Young’s assertions as to what Kepecs “implicitly” recites is an impermissible, unsupported assessment of the prior art. In re Zurko, 258 F.3d at 1385-86. Examiner Young has failed to establish a prima facie case of obviousness for at least this reason.

Contrary to the Examiner’s assertion, the portions of Kepecs describing “requirements to purchase other items to qualify for the discount” and “upon purchase of items at the associated store” do not suggest *provide an indication of said unlock code upon a completion of said qualifying action*. Even if such “requirements” suggest a *qualifying action*, Kepecs does not suggest that an indication of an unlock code is provided upon completion of such “requirements.” The Examiner does not provide any reasoned finding to the contrary. Examiner Young has failed to establish a prima facie case of obviousness for at least this reason.

#### **4.10.3. No Substantial Evidence of a Proper Motivation to Modify any Teaching of Kepecs**

Examiner Young’s Universal Motivation does not suggest the desirability of associating a qualifying action with an unlock code or providing an indication of

the unlock code upon completion of the qualifying action. Nothing in Kepecs or otherwise of record suggests that it would have been desirable to provide specifically for providing an indication of an unlock code upon completion of a qualifying action.

Examiner Young articulates no reasoning why the desirability of resisting fraud, facilitating anonymity, or directing appropriate discounts would specifically suggest the desirability of providing for the above features. Even if the claimed subject matter meets the needs recited by the Examiner, “[r]ecognition of a need does not render obvious the achievement that meets that need.” Cardiac Pacemakers, 381 F.3d at 1377.

Examiner Young has not made the requisite showing, based on actual evidence, that one of ordinary skill in the art would have been prompted to modify the teachings of Kepecs in the manner suggested by Examiner Young to provide specifically for all of the claimed subject matter of Claim 147. Examiner Young has failed to establish a prima facie case of obviousness for at least this reason.

#### **4.10.4. Conclusion**

To the extent that Examiner Young is relying solely upon Kepecs in support of an assertion that all of the claimed subject matter of Claims 147-150 and 259-276 was known and obvious to provide for, the Section 103(a) rejection cannot stand. Examiner Young has failed otherwise to indicate substantial evidence in support of Examiner Young’s assertions as to what was known (including the asserted motivation), and those assertions, even if true, could not support an obviousness rejection. Accordingly, the Examiner has failed to establish a prima facie case of obviousness for any of Claims 147-150 and 259-276. Appellants request reversal of the Section 103(a) rejection of Claims 147-150 and 259-276.

#### **4.11. Claims 253-255**

Each of Claims 253 and 256 is independent. Claims 254 and 255 depend from Claim 253. All of the arguments discussed below with respect to Claim 253 are equally applicable to each of Claims 254 and 255.

Substantial evidence is required of all factual findings. Absent substantial evidence, no prima facie case of obviousness exists.

The rejection of Claim 253 is flawed because Examiner Young has not made a prima facie case of obviousness:

- Examiner Young has failed to establish with substantial evidence that the claimed subject matter of *providing an indication of a promotion outcome to a user and an indication of an unlock code associated with said promotion outcome to an intermediary*, was known at the time of invention
- Examiner Young does not provide any evidence of a motivation known to one of ordinary skill in the art to provide for any of the above claimed features
- Examiner Young has otherwise failed to provide substantial evidence of record establishing that it would have been obvious to provide specifically for the system of Claim 253

##### **4.11.1. Examiner's Findings**

Examiner Young finds: “Kepecs (col. 3, ll. 14-32) discloses: ‘holder of the unique ID...or ...binding of the caller’s [phone] number to his unique ID.’” [Third Office Action, page 31].

Examiner Young finds: “Kepecs lacks explicit recital [of] ‘an intermediary....’” [Third Office Action, page 31].

Examiner Young further finds:

It would have been obvious to a person of ordinary skill in the art at the time of the invention that the disclosure of Kepecs (col. 3, ll. 14-32) implicitly “an intermediary....”, and it would have been obvious to modify and interpret the disclosure of Kepecs (col. 3, ll. 14-32) cited above as implicitly showing “an intermediary....”, because [of Examiner Young’s Universal Motivation].

[Third Office Action, page 32].

**4.11.2. Examiner’s Findings are Not Supported by Substantial Evidence of Record**

The record cannot support the Examiner’s rejection of Claim 253 as obvious in light of Kepecs.

Examiner Young concedes that Kepecs does not explicitly teach *an intermediary*. Examiner Young thus also concedes that Kepecs cannot teach *providing an indication of a promotion outcome to a user and an indication of an unlock code associated with said promotion outcome to an intermediary*.

Examiner Young argues that Kepecs somehow “implicitly” teaches an intermediary, but does not even attempt to provide any rationale in support of this finding. Examiner Young does not even remotely support the assertion that an entity would have provided an outcome to a user and an unlock code to an intermediary. Examiner Young has failed to establish a prima facie case of obviousness for at least this failure to provide a clear and particular finding supported by substantial evidence of record.

Despite the express requirements of Graham, Examiner Young does not even attempt to define the level of ordinary skill in the art, and thus any assertions as to what would have been implicitly suggested to one of ordinary skill in the art are unsupported and suspect. Examiner Young has failed to establish a prima facie case of obviousness for at least this reason.

Further, Examiner Young does not even attempt to explain how “binding of the caller’s phone number to his unique ID” somehow suggests providing an

indication of an unlock code to an intermediary. Without objective evidence in support, Examiner Young's assertions as to what Kepecs "implicitly" recites is an impermissible, unsupported assessment of the prior art. In re Zurko, 258 F.3d at 1385-86. Examiner Young has failed to establish a prima facie case of obviousness for at least this reason.

Contrary to the Examiner's assertion, the cited portion of Kepecs describing binding of an ID to a phone number does not remotely suggest providing an indication of an unlock code to an intermediary, much less also providing an indication of an outcome to a user. Examiner Young has failed to establish a prima facie case of obviousness for at least this reason.

**4.11.3. No Substantial Evidence of a Proper Motivation to Modify any Teaching of Kepecs**

Examiner Young's Universal Motivation does not suggest the desirability of *providing an indication of a promotion outcome to a user and an indication of an unlock code associated with said promotion outcome to an intermediary*. Nothing in Kepecs or otherwise of record suggests such a feature.

Examiner Young articulates no reasoning why the desirability of resisting fraud, facilitating anonymity, or directing appropriate discounts would specifically suggest the desirability of *providing an indication of a promotion outcome to a user and an indication of an unlock code associated with said promotion outcome to an intermediary*. Even if the claimed subject matter meets the needs recited by the Examiner, "[r]ecognition of a need does not render obvious the achievement that meets that need." Cardiac Pacemakers, 381 F.3d at 1377.

Examiner Young has not made the requisite showing, based on actual evidence, that one of ordinary skill in the art would have been prompted to modify the teachings of Kepecs in the manner suggested by Examiner Young to provide

specifically for all of the claimed subject matter of Claim 253. Examiner Young has failed to establish a prima facie case of obviousness for at least this reason.

**4.11.4. Conclusion**

To the extent that Examiner Young is relying solely upon Kepecs in support of an assertion that all of the claimed subject matter of Claims 253-255 was known and obvious to provide for, the Section 103(a) rejection cannot stand. Examiner Young has failed otherwise to indicate substantial evidence in support of Examiner Young's assertions as to what was known (including the asserted motivation), and those assertions, even if true, could not support an obviousness rejection. Accordingly, the Examiner has failed to establish a prima facie case of obviousness for any of Claims 253-255. Appellants request reversal of the Section 103(a) rejection of Claims 253-255.

#### **4.12. Claims 256-258**

Each of Claims 254 and 256 is independent. Claims 254 and 255 depend from Claim 256. All of the arguments discussed below with respect to Claim 256 are equally applicable to each of Claims 254 and 255.

Substantial evidence is required of all factual findings. Absent substantial evidence, no prima facie case of obviousness exists.

The rejection of Claim 256 is flawed because Examiner Young has not made a prima facie case of obviousness:

- Examiner Young has failed to establish with substantial evidence that the claimed subject matter of *providing an indication of a promotion outcome to an intermediary and an indication of an unlock code associated with said promotion outcome to a user*, was known at the time of invention
- Examiner Young does not provide any evidence of a motivation known to one of ordinary skill in the art to provide for any of the above claimed features
- Examiner Young has otherwise failed to provide substantial evidence of record establishing that it would have been obvious to provide specifically for the system of Claim 256

##### **4.12.1. Examiner's Findings**

Examiner Young finds: “Kepecs (col. 3, ll. 14-32) discloses: ‘holder of the unique ID...or ...binding of the caller’s [phone] number to his unique ID.’” [Third Office Action, page 31].

Examiner Young finds: “Kepecs lacks explicit recital [of] ‘an intermediary....’” [Third Office Action, page 31].

Examiner Young further finds:

It would have been obvious to a person of ordinary skill in the art at the time of the invention that the disclosure of Kepecs (col. 3, ll. 14-32) implicitly “an intermediary....”, and it would have been obvious to modify and interpret the disclosure of Kepecs (col. 3, ll. 14-32) cited above as implicitly showing “an intermediary....”, because [of Examiner Young’s Universal Motivation].

[Third Office Action, page 32].

**4.12.2. Examiner’s Findings are Not Supported by Substantial Evidence of Record**

The record cannot support the Examiner’s rejection of Claim 256 as obvious in light of Kepecs.

Examiner Young concedes that Kepecs does not explicitly teach *an intermediary*. Examiner Young thus also concedes that Kepecs cannot teach *providing an indication of a promotion outcome to an intermediary and an indication of an unlock code associated with said promotion outcome to a user*.

Examiner Young argues that Kepecs somehow “implicitly” teaches an intermediary, but does not even attempt to provide any rationale in support of this finding. Examiner Young does not even remotely support the assertion that an entity would have provided an outcome to an intermediary and an unlock code to a user. Examiner Young has failed to establish a prima facie case of obviousness for at least this failure to provide a clear and particular finding supported by substantial evidence of record.

Despite the express requirements of Graham, Examiner Young does not even attempt to define the level of ordinary skill in the art, and thus any assertions as to what would have been implicitly suggested to one of ordinary skill in the art are unsupported and suspect. Examiner Young has failed to establish a prima facie case of obviousness for at least this reason.

Further, Examiner Young does not even attempt to explain how “binding of the caller’s phone number to his unique ID” somehow suggests providing an



indication of a promotion outcome to an intermediary. Without objective evidence in support, Examiner Young's assertions as to what Kepecs "implicitly" recites is an impermissible, unsupported assessment of the prior art. In re Zurko, 258 F.3d at 1385-86. Examiner Young has failed to establish a prima facie case of obviousness for at least this reason.

Contrary to the Examiner's assertion, the cited portion of Kepecs describing binding of an ID to a phone number does not remotely suggest providing an indication of an outcome to an intermediary, much less also providing an indication of an unlock code to a user. Examiner Young has failed to establish a prima facie case of obviousness for at least this reason.

**4.12.3. No Substantial Evidence of a Proper Motivation to Modify any Teaching of Kepecs**

Examiner Young's Universal Motivation does not suggest the desirability of *providing an indication of a promotion outcome to an intermediary and an indication of an unlock code associated with said promotion outcome to a user*. Nothing in Kepecs or otherwise of record suggests such a feature.

Examiner Young articulates no reasoning why the desirability of resisting fraud, facilitating anonymity, or directing appropriate discounts would specifically suggest the desirability of *providing an indication of a promotion outcome to an intermediary and an indication of an unlock code associated with said promotion outcome to a user*. Even if the claimed subject matter meets the needs recited by the Examiner, "[r]ecognition of a need does not render obvious the achievement that meets that need." Cardiac Pacemakers, 381 F.3d at 1377.

Examiner Young has not made the requisite showing, based on actual evidence, that one of ordinary skill in the art would have been prompted to modify the teachings of Kepecs in the manner suggested by Examiner Young to provide

specifically for all of the claimed subject matter of Claim 256. Examiner Young has failed to establish a prima facie case of obviousness for at least this reason.

**4.12.4. Conclusion**

To the extent that Examiner Young is relying solely upon Kepecs in support of an assertion that all of the claimed subject matter of Claims 256-258 was known and obvious to provide for, the Section 103(a) rejection cannot stand. Examiner Young has failed otherwise to indicate substantial evidence in support of Examiner Young's assertions as to what was known (including the asserted motivation), and those assertions, even if true, could not support an obviousness rejection. Accordingly, the Examiner has failed to establish a prima facie case of obviousness for any of Claims 256-258. Appellants request reversal of the Section 103(a) rejection of Claims 256-258.

#### **4.13. Claims 155-158, 278-282, and 287**

Each of Claims 155-158, 278 and 287 is independent. Claims 156-158 are directed to respective statutory classes and contain limitations similar to those of Claim 155. Claims 278 and 287 provide for some functionality similar to that of Claim 155. Claims 279-282 depend from Claim 278. All of the arguments discussed below with respect to Claim 155 are equally applicable to each of Claims 156-158, 278-282, and 287.

Substantial evidence is required of all factual findings. Absent substantial evidence, no prima facie case of obviousness exists.

The rejection of Claim 155 is flawed because Examiner Young has not made a prima facie case of obviousness:

- Examiner Young has failed to establish with substantial evidence that the claimed subject matter of *receive an indication of a qualifying action associated with an unlock code that can unlock said outcome*, was known at the time of invention
- Examiner Young does not provide any evidence of a motivation known to one of ordinary skill in the art to provide for the above claimed features
- Examiner Young has otherwise failed to provide substantial evidence of record establishing that it would have been obvious to provide specifically for the system of Claim 155

##### **4.13.1. Examiner's Findings**

Although the subject matter differs, Examiner Young relies solely on the same findings and bases for rejection discussed above with respect to Claims 147-150. [Third Office Action, page 9].

**4.13.2. Examiner's Findings are Not Supported by Substantial Evidence of Record**

For at least the reasons stated with respect to Claim 147, the record cannot support the Examiner's rejection of Claim 155 as obvious in light of Kepecs.

Examiner Young concedes that Kepecs does not explicitly teach *associate a qualifying action with said unlock code*. Accordingly, Examiner Young must also concede that Kepecs does not teach *receive an indication of a qualifying action associated with an unlock code that can unlock said outcome*.

Examiner Young argues that Kepecs somehow "implicitly" teaches the above features, but does not even attempt to provide any rationale in support of this finding. Examiner Young has failed to establish a prima facie case of obviousness for at least this failure to provide a clear and particular finding supported by substantial evidence of record.

Despite the express requirements of Graham, Examiner Young does not even attempt to define the level of ordinary skill in the art, and thus any assertions as to what would have been implicitly suggested to one of ordinary skill in the art are unsupported and suspect. Examiner Young has failed to establish a prima facie case of obviousness for at least this reason.

Further, Examiner Young does not even attempt to explain, for example, how one of ordinary skill in the art (who has not been defined) would have interpreted the brief reference to "a registration process" as somehow suggesting either *associate a qualifying action with said unlock code*, much less *receive an indication of a qualifying action associated with an unlock code that can unlock said outcome*. Without objective evidence in support, Examiner Young's assertions as to what Kepecs "implicitly" recites is an impermissible, unsupported assessment of the prior art. In re Zurko, 258 F.3d at 1385-86. Examiner Young has failed to establish a prima facie case of obviousness for at least this reason.

**4.13.3. No Substantial Evidence of a Proper Motivation to Modify any Teaching of Kepecs**

Examiner Young's Universal Motivation does not suggest the desirability of either *associate a qualifying action with said unlock code* or *receive an indication of a qualifying action associated with an unlock code that can unlock said outcome*. Nothing in Kepecs or otherwise of record suggests that it would have been desirable to provide specifically for *receive an indication of a qualifying action associated with an unlock code that can unlock said outcome*.

Examiner Young articulates no reasoning why the desirability of resisting fraud, facilitating anonymity, or directing appropriate discounts would specifically suggest the desirability of providing for the above features. Even if the claimed subject matter meets the needs recited by the Examiner, “[r]ecognition of a need does not render obvious the achievement that meets that need.” Cardiac Pacemakers, 381 F.3d at 1377.

Examiner Young has not made the requisite showing, based on actual evidence, that one of ordinary skill in the art would have been prompted to modify the teachings of Kepecs in the manner suggested by Examiner Young to provide specifically for all of the claimed subject matter of Claim 155. Examiner Young has failed to establish a prima facie case of obviousness for at least this reason.

**4.13.4. Conclusion**

To the extent that Examiner Young is relying solely upon Kepecs in support of an assertion that all of the claimed subject matter of Claims 155-158, 278-282, and 287 was known and obvious to provide for, the Section 103(a) rejection cannot stand. Examiner Young has failed otherwise to indicate substantial evidence in support of Examiner Young's assertions as to what was known (including the asserted motivation), and those assertions, even if true, could not support an obviousness rejection. Accordingly, the Examiner has failed to establish a prima

facie case of obviousness for any of Claims 155-158, 278-282, and 287.

Appellants request reversal of the Section 103(a) rejection of Claims 155-158, 278-282, and 287.

#### **4.14. Claims 139-142**

Each of Claims 139-142 is independent. Claims 140-142 are directed to respective statutory classes and contain limitations similar to those of Claim 139. All of the arguments discussed below with respect to Claim 139 are equally applicable to each of Claims 140-142.

Substantial evidence is required of all factual findings. Absent substantial evidence, no prima facie case of obviousness exists.

The rejection of Claim 139 is flawed because Examiner Young has not made a prima facie case of obviousness:

- Examiner Young has failed to establish with substantial evidence that the claimed subject matter of *generate an unlock code associated with said outcome*, was known at the time of invention
- Examiner Young does not provide any evidence of a motivation known to one of ordinary skill in the art to provide for the above claimed feature
- Examiner Young has otherwise failed to provide substantial evidence of record establishing that it would have been obvious to provide specifically for the system of Claim 139

##### **4.14.1. Examiner's Findings**

Examiner Young finds: “Kepecs lacks explicit recital of ‘generate an unlock code associated with said outcome....’” [Third Office Action, page 5].

Examiner Young further finds:

It would have been obvious to a person of ordinary skill in the art at the time of the invention that the disclosure of Kepecs (col. 2, ll. 65-67; col. 3, ll. 1-33) implicitly shows “generate an unlock code associated with said outcome....”, and it would have been obvious to modify and interpret the disclosure of Kepecs (col. 2, ll. 65-67; col. 3, ll. 1-33) cited above as implicitly showing “generate an unlock code

associated with said outcome....”, because [of Examiner Young’s Universal Motivation].

[Third Office Action, page 5].

**4.14.2. Examiner’s Findings are Not Supported by Substantial Evidence of Record**

The record cannot support the Examiner’s rejection of Claim 139 as obvious in light of Kepecs.

Examiner Young concedes that Kepecs does not explicitly teach *generate an unlock code associated with said outcome*.

Examiner Young appears to argue that Kepecs somehow “implicitly” teaches the above features and/or that it would have been obvious to provide for such a feature, but does not even attempt to provide any rationale in support of these findings. Examiner Young has failed to establish a prima facie case of obviousness for at least this failure to provide a clear and particular finding supported by substantial evidence of record.

Despite the express requirements of Graham, Examiner Young does not even attempt to define the level of ordinary skill in the art, and thus any assertions as to what would have been implicitly suggested to one of ordinary skill in the art are unsupported and suspect. Examiner Young has failed to establish a prima facie case of obviousness for at least this reason.

Further, Examiner Young does not even attempt to explain, for example, how one of ordinary skill in the art (who has not been defined) would have interpreted the cited portions as somehow suggesting *generate an unlock code associated with said outcome*. Without objective evidence or a reasoned finding in support, Examiner Young’s assertions as to what Kepecs “implicitly” recites is an impermissible, unsupported assessment of the prior art. In re Zurko, 258 F.3d at



1385-86. Examiner Young has failed to establish a prima facie case of obviousness for at least this reason.

Contrary to the Examiner's assertion, the portions of Kepecs do not suggest (implicitly or explicitly) *generating an unlock code that is associated with an outcome*. The Examiner does not provide any reasoned finding to the contrary. Examiner Young has failed to establish a prima facie case of obviousness for at least this reason.

**4.14.3. No Substantial Evidence of a Proper Motivation to Modify any Teaching of Kepecs**

Examiner Young's Universal Motivation does not suggest the desirability of *generate an unlock code associated with an outcome*. Nothing in Kepecs or otherwise of record suggests that it would have been desirable to provide specifically for generating an unlock code, in which the unlock code is associated with an outcome.

To the contrary, Kepecs suggests creating promotions based on information about a customer (e.g., "microhistory").

Examiner Young articulates no reasoning why the desirability of resisting fraud, facilitating anonymity, or directing appropriate discounts would specifically suggest the desirability of providing for the above feature. Even if the claimed subject matter somehow meets the needs recited by the Examiner, "[r]ecognition of a need does not render obvious the achievement that meets that need." Cardiac Pacemakers, 381 F.3d at 1377.

Examiner Young has not made the requisite showing, based on actual evidence, that one of ordinary skill in the art would have been prompted to modify the teachings of Kepecs in the manner suggested by Examiner Young to provide specifically for all of the claimed subject matter of Claim 139. Examiner Young has failed to establish a prima facie case of obviousness for at least this reason.

#### **4.14.4.      Conclusion**

To the extent that Examiner Young is relying solely upon Kepecs in support of an assertion that all of the claimed subject matter of Claims 139-142 was known and obvious to provide for, the Section 103(a) rejection cannot stand. Examiner Young has failed otherwise to indicate substantial evidence in support of Examiner Young's assertions as to what was known (including the asserted motivation), and those assertions, even if true, could not support an obviousness rejection. Accordingly, the Examiner has failed to establish a prima facie case of obviousness for any of Claims 139-142. Appellants request reversal of the Section 103(a) rejection of Claims 139-142.

#### **4.15. Claims 159-162 and 283-286**

Each of Claims 159-162, 283, and 286 is independent. Claims 160-162 are directed to respective statutory classes and contain limitations similar to those of Claim 159. Claims 283 and 286 provide for some functionality similar to that of Claim 159. Claims 284 and 285 depend from Claim 283. All of the arguments discussed below with respect to Claim 159 are equally applicable to each of Claims 160-162 and 283-286.

Substantial evidence is required of all factual findings. Absent substantial evidence, no prima facie case of obviousness exists.

The rejection of Claim 159 is flawed because Examiner Young has not made a prima facie case of obviousness:

- Examiner Young has failed to establish with substantial evidence that it would have been obvious to provide for a system operable to provide for all of the functionality of *receive an indication of an unlock code, receive said outcome, and unlock said outcome*
- Examiner Young has otherwise failed to provide substantial evidence of record establishing that it would have been obvious to provide specifically for the system of Claim 159

##### **4.15.1. Examiner's Findings**

Although the subject matter differs, Examiner Young relies solely on the same findings and bases for rejection discussed above with respect to Claims 147-150. [Third Office Action, page 9].

##### **4.15.2. Examiner's Findings are Not Supported by Substantial Evidence of Record**

For at least the reasons stated with respect to Claim 147, the record cannot support the Examiner's rejection of Claim 159 as obvious in light of Kepecs.

Examiner Young argues that Kepecs somehow “implicitly” teaches the above features, but does not even attempt to provide any rationale in support of this finding. Examiner Young has failed to establish a prima facie case of obviousness for at least this failure to provide a clear and particular finding supported by substantial evidence of record.

Despite the express requirements of Graham, Examiner Young does not even attempt to define the level of ordinary skill in the art, and thus any assertions as to what would have been implicitly suggested to one of ordinary skill in the art are unsupported and suspect. Examiner Young has failed to establish a prima facie case of obviousness for at least this reason.

Further, Examiner Young does not even attempt to explain, for example, how one of ordinary skill in the art (who has not been defined) would have interpreted the brief cited portions of Kepecs as somehow suggesting *receive an indication of an unlock code, receive said outcome, and unlock said outcome*. To the extent that the described “promotions” suggest outcomes (which the Examiner has not established by a clear and reasoned finding), there is no suggestion in the Kepecs system that the DAP should “unlock” a promotion that it receives—the DAP creates the promotion. Without objective evidence in support, Examiner Young’s assertions as to what Kepecs “implicitly” recites is an impermissible, unsupported assessment of the prior art. In re Zurko, 258 F.3d at 1385-86. Examiner Young has failed to establish a prima facie case of obviousness for at least this reason.

#### **4.15.3. No Substantial Evidence of a Proper Motivation to Modify any Teaching of Kepecs**

Examiner Young’s Universal Motivation does not suggest the desirability of the specific combination of *receive an indication of an unlock code, receive said outcome, and unlock said outcome*.

Examiner Young articulates no reasoning why the desirability of resisting fraud, facilitating anonymity, or directing appropriate discounts would specifically suggest the desirability of providing for the above combination of features. Even if the claimed subject matter meets the needs recited by the Examiner, “[r]ecognition of a need does not render obvious the achievement that meets that need.” Cardiac Pacemakers, 381 F.3d at 1377.

Examiner Young has not made the requisite showing, based on actual evidence, that one of ordinary skill in the art would have been prompted to modify the teachings of Kepecs in the manner suggested by Examiner Young to provide specifically for all of the claimed subject matter of Claim 159. Examiner Young has failed to establish a prima facie case of obviousness for at least this reason.

#### **4.15.4. Conclusion**

To the extent that Examiner Young is relying solely upon Kepecs in support of an assertion that all of the claimed subject matter of Claims 159-162 and 283-286 was known and obvious to provide for, the Section 103(a) rejection cannot stand. Examiner Young has failed otherwise to indicate substantial evidence in support of Examiner Young’s assertions as to what was known (including the asserted motivation), and those assertions, even if true, could not support an obviousness rejection. Accordingly, the Examiner has failed to establish a prima facie case of obviousness for any of Claims 159-162 and 283-286. Appellants request reversal of the Section 103(a) rejection of Claims 159-162 and 283-286.

#### **4.16. Claims 163-248**

Claim 163 is independent. Claims 164-248 depend directly or indirectly from Claim 163. All of the arguments discussed below with respect to Claim 163 are equally applicable to Claims 164-248.

Substantial evidence is required of all factual findings. Absent substantial evidence, no prima facie case of obviousness exists.

The rejection of Claim 163 is flawed because Examiner Young has not made a prima facie case of obviousness:

- Examiner Young has failed to establish with substantial evidence that the claimed subject matter of *generating an outcome and also generating an unlock code capable of unlocking said outcome*, was known at the time of invention
- Examiner Young does not provide any evidence of a motivation known to one of ordinary skill in the art to provide for the above claimed features
- Examiner Young has otherwise failed to provide substantial evidence of record establishing that it would have been obvious to provide specifically for the system of Claim 163

##### **4.16.1. Examiner's Findings**

“Claim 163 is rejected for the same reasons as claim 141.” [Third Office Action, page 10]. Tracking back through the Examiner’s cross-references, it appears that Examiner Young rejects Claim 163 for the same reasons as Claim 139.

##### **4.16.2. Examiner's Findings are Not Supported by Substantial Evidence of Record**

The record cannot support the Examiner’s rejection of Claim 163 as obvious in light of Kepecs.

As discussed above with respect to Claim 139, Examiner Young concedes that Kepecs does not explicitly teach *generate an unlock code associated with said outcome*.

As discussed above with respect to Claim 139, Examiner Young does not even attempt to provide any rationale in support of these findings. Examiner Young has failed to establish a prima facie case of obviousness for at least this failure to provide a clear and particular finding supported by substantial evidence of record.

Further, Examiner Young does not even attempt to address the limitation of Claim 163 that for a generated outcome, an unlock code is generated that is capable of unlocking that generated outcome.

Despite the express requirements of Graham, Examiner Young does not even attempt to define the level of ordinary skill in the art, and thus any assertions as to what would have been implicitly suggested to one of ordinary skill in the art are unsupported and suspect. Examiner Young has failed to establish a prima facie case of obviousness for at least this reason.

Further, Examiner Young does not even attempt to explain, for example, how one of ordinary skill in the art (who has not been defined) would have interpreted the cited portions as somehow suggesting both *generating an outcome* and *generating an unlock code capable of unlocking that generated outcome*. Without objective evidence or a reasoned finding in support, Examiner Young's assertions as to what Kepecs "implicitly" recites is an impermissible, unsupported assessment of the prior art. In re Zurko, 258 F.3d at 1385-86. Examiner Young has failed to establish a prima facie case of obviousness for at least this reason.

Contrary to the Examiner's assertion, the portions of Kepecs do not suggest (implicitly or explicitly) *generating an outcome* and *generating an unlock code capable of unlocking that generated outcome*. The Examiner does not provide any

reasoned finding to the contrary. Examiner Young has failed to establish a prima facie case of obviousness for at least this reason.

**4.16.3. No Substantial Evidence of a Proper Motivation to Modify any Teaching of Kepecs**

Examiner Young's Universal Motivation does not suggest the desirability of *generating an outcome* and *generating an unlock code capable of unlocking that generated outcome*. Nothing in Kepecs or otherwise of record suggests that it would have been desirable to provide specifically for generating an unlock code, in which the unlock code is associated with an outcome.

To the contrary, Kepecs suggests creating promotions based on information about a customer (e.g., “microhistory”). There is no suggestion in Kepecs, for example, of creating a promotion and then generating an unlock code to somehow “unlock” that promotion.

Examiner Young articulates no reasoning why the desirability of resisting fraud, facilitating anonymity, or directing appropriate discounts would specifically suggest the desirability of providing for the above features. Even if the claimed subject matter somehow meets the needs recited by the Examiner, “[r]ecognition of a need does not render obvious the achievement that meets that need.” Cardiac Pacemakers, 381 F.3d at 1377.

Examiner Young has not made the requisite showing, based on actual evidence, that one of ordinary skill in the art would have been prompted to modify the teachings of Kepecs in the manner suggested by Examiner Young to provide specifically for all of the claimed subject matter of Claim 163. Examiner Young has failed to establish a prima facie case of obviousness for at least this reason.

**4.16.4. Conclusion**

To the extent that Examiner Young is relying solely upon Kepecs in support of an assertion that all of the claimed subject matter of Claims 163-248 was known



and obvious to provide for, the Section 103(a) rejection cannot stand. Examiner Young has failed otherwise to indicate substantial evidence in support of Examiner Young's assertions as to what was known (including the asserted motivation), and those assertions, even if true, could not support an obviousness rejection. Accordingly, the Examiner has failed to establish a prima facie case of obviousness for any of Claims 163-248. Appellants request reversal of the Section 103(a) rejection of Claims 163-248.

#### **4.17. Claim 197**

Claim 197 depends from Claim 163 and is allowable for at least the arguments provided with respect to Claim 163, which are incorporated in this section.

Substantial evidence is required of all factual findings. Absent substantial evidence, no prima facie case of obviousness exists.

The rejection of Claim 197 is flawed because Examiner Young has not made a prima facie case of obviousness:

- Examiner Young has ignored and failed to establish with substantial evidence that the claimed subject matter of either *receiving payment for said indication of said unlock code* or *receiving payment for said indication of said outcome* was known at the time of invention
- Examiner Young inappropriately relies on so-called “Official Notice” that is an improper and unsupported assessment of the prior art and is not clear (e.g., supposedly relates to “advantages of the statistical analysis elements and limitations”)
- Examiner Young does not provide any evidence of a motivation known to one of ordinary skill in the art to provide for any of the above claimed features
- Examiner Young has otherwise failed to provide substantial evidence of record establishing that it would have been obvious to provide specifically for the system of Claim 197

##### **4.17.1. Examiner’s Findings**

Examiner Young asserts Kepecs (col. 4, ll. 25-40) implicitly shows Internet payment concerning an “outcome.” [Third Office Action, page 19].

The Examiner concedes that Kepecs does not explicitly teach payment for an indication of an unlock code or an outcome. [Third Office Action, page 19].

**4.17.2. Examiner's Findings are Not Supported by Substantial Evidence of Record**

The record cannot support the Examiner's rejection of Claim 197 as obvious in light of Kepecs.

Kepecs is devoid of any hint of *receiving payment for said indication of said unlock code or receiving payment for said indication of said outcome*. The actual evidence of record cannot support any assertion that *receiving payment for said indication of said unlock code or receiving payment for said indication of said outcome* was known or desirable to one of ordinary skill in the art. Examiner Young has failed to establish a prima facie case of obviousness of Claim 197 for at least this reason.

The cited portion cannot support the Examiner's assertion of "Official Notice." Examiner Young has failed to establish a prima facie case of obviousness of Claim 197 for at least this reason.

The Examiner's Official Notice does not appear to make sense—it refers to statistical analysis elements that the Examiner does not even attempt to explain, much less explain how such "statistical analysis elements" would somehow suggest payment of any kind. Examiner Young has failed to establish a prima facie case of obviousness of Claim 197 for at least this reason.

**4.17.3. No Substantial Evidence of a Proper Motivation to Modify any Teaching of Kepecs**

As discussed above, Examiner Young has failed to indicate properly any actual evidence in support of Examiner Young's assertions with respect to payment for an indication of an unlock code or outcome.

Examiner Young's Universal Motivation does not suggest the desirability of such payments. Nothing in Kepecs or otherwise of record suggests that it would have been desirable to provide specifically for such payments.

Examiner Young's Universal Motivation clearly fails to establish a prima facie case of obviousness. Examiner Young articulates no reasoning why the desirability of resisting fraud, facilitating anonymity, or directing appropriate discounts would specifically suggest the desirability of providing such payments. Even if the claimed subject matter meets the needs recited by the Examiner, “[r]ecognition of a need does not render obvious the achievement that meets that need.” Cardiac Pacemakers, 381 F.3d at 1377.

Examiner Young has not made the requisite showing, based on actual evidence, that one of ordinary skill in the art would have been prompted to modify the teachings of Kepecs in the manner suggested by Examiner Young to provide specifically for all of the claimed subject matter of Claim 197. Examiner Young has failed to establish a prima facie case of obviousness for at least this reason.

#### **4.17.4. Conclusion**

To the extent that Examiner Young is relying solely upon Kepecs in support of an assertion that all of the claimed subject matter of Claim 197 was known and obvious to provide for, the Section 103(a) rejection cannot stand. Examiner Young has failed otherwise to indicate substantial evidence in support of Examiner Young's assertions as to what was known (including the asserted motivation), and those assertions, even if true, could not support an obviousness rejection. Accordingly, the Examiner has failed to establish a prima facie case of obviousness for Claim 197. Appellants request reversal of the Section 103(a) rejection of Claim 197.

#### 4.18. Claim 176

Claim 176 depends from Claim 163 and is allowable for at least the arguments provided with respect to Claim 163, which are incorporated in this section.

Further, the Examiner has ignored the subject matter of *invalidating said qualifying action*.

Examiner Young asserts that Claim 176 is “rejected for substantially the same reasons as claim 167.” [Third Office Action, page 15].

Nothing in the discussion of Claim 167, however, addresses the recited limitation of *invalidating said qualifying action*. To the extent the Examiner is relying upon the assertion that Kepecs teaches associating an expiration date with said qualifying action, even if that assertion were supported by evidence of record, the Examiner articulates no reasoning why that would suggest invalidating a qualifying action to one of ordinary skill in the art. Examiner Young has failed to establish a prima facie case of obviousness for at least this reason.

Examiner Young has not even attempted to articulate a reasoning supported by actual evidence of record that a motivation to provide for *invalidating said qualifying action* would have been known at the time of invention. Examiner Young has failed to establish a prima facie case of obviousness for at least this reason.

Appellants request the reversal of the Section 103(a) rejection of Claim 176.

#### **4.19. Claims 221-224**

Claims 221-224 depend from Claim 163 and is allowable for at least the arguments provided with respect to Claim 163, which are incorporated in this section.

Further, the Examiner has ignored the subject matter of wherein said benefit varies in relation to how many of said plurality of users perform a specific recited action.

The Examiner has never even attempted to address any of the claimed subject matter wherein said benefit varies in relation to how many of said plurality of users perform a specific recited action. Examiner Young has failed to establish a prima facie case of obviousness for at least this reason.

Nothing in Kepecs remotely hints that a benefit may vary based on how many of a plurality of users perform any type of action, much less the specific types of actions recited respectively in Claims 221-224. The Examiner does not assert otherwise. Examiner Young has failed to establish a prima facie case of obviousness for at least this reason.

There is no evidence of record that any such features were known or that it would have been obvious to modify Kepecs to provide for such features. Examiner Young has failed to establish a prima facie case of obviousness for at least this reason.

Appellants request the reversal of the Section 103(a) rejection of Claim 221-224.

#### 4.20. Claim 246

Claim 246 depends from Claim 163 and is allowable for at least the arguments provided with respect to Claim 163, which are incorporated in this section.

Examiner Young asserts: “Kepecs (col. 9, ll. 40-63; and col. 13, ll. 63) implicitly shows” but also “lacks explicit recital of” *invalidating said unlock code*. [Third Office Action, page 27].

Nothing in the cited portion suggests (explicitly or implicitly) *invalidating said unlock code*. The Examiner provides no reasoning as to why the cited portion of Kepecs is evidence that such a feature was known.

Examiner Young’s Universal Motivation does not suggest the desirability of invalidating an unlock code. Nothing in Kepecs or otherwise of record suggests that it would have been desirable to provide specifically for invalidating an unlock code.

Examiner Young’s Universal Motivation clearly fails to establish a prima facie case of obviousness. Examiner Young articulates no reasoning why the desirability of resisting fraud, facilitating anonymity, or directing appropriate discounts would specifically suggest the desirability of invalidating an unlock code. Even if the claimed subject matter meets the needs recited by the Examiner, “[r]ecognition of a need does not render obvious the achievement that meets that need.” Cardiac Pacemakers, 381 F.3d at 1377.

Examiner Young has not made the requisite showing, based on actual evidence, that one of ordinary skill in the art would have been prompted to modify the teachings of Kepecs in the manner suggested by Examiner Young to provide specifically for all of the claimed subject matter of Claim 246. Examiner Young has failed to establish a prima facie case of obviousness for at least this reason.

Appellants request the reversal of the Section 103(a) rejection of Claim 246.



#### **4.21. Claim 218**

Claim 218 depends from Claim 163 and is allowable for at least the arguments provided with respect to Claim 163, which are incorporated in this section.

Examiner Young asserts that Claim 218 is “rejected for substantially the same reasons as claim 175.” [Third Office Action, page 22]. By this cross-reference, the Examiner is actually referring to the rejection of Claim 167.

Nothing in the discussion of Claim 167, however, addresses the recited limitation of wherein said unlock code has an associated expiration date. To the extent the Examiner is relying upon the assertion that Kepecs teaches associating an expiration date with said qualifying action the Examiner articulates no reasoning why that would suggest an expiration date associated with an unlock code. Examiner Young has failed to establish a prima facie case of obviousness for at least this reason.

Examiner Young has not even attempted to articulate a reasoning supported by actual evidence of record that a motivation to provide for wherein said unlock code has an associated expiration date would have been known at the time of invention. Examiner Young has failed to establish a prima facie case of obviousness for at least this reason.

Examiner Young’s Universal Motivation does not suggest the desirability of wherein said unlock code has an associated expiration date. Nothing in Kepecs or otherwise of record suggests that it would have been desirable to provide specifically for wherein said unlock code has an associated expiration date.

Examiner Young’s Universal Motivation clearly fails to establish a prima facie case of obviousness. Examiner Young articulates no reasoning why the desirability of resisting fraud, facilitating anonymity, or directing appropriate

discounts would specifically suggest the desirability of wherein said unlock code has an associated expiration date. Even if the claimed subject matter meets the needs recited by the Examiner, “[r]ecognition of a need does not render obvious the achievement that meets that need.” Cardiac Pacemakers, 381 F.3d at 1377.

Examiner Young has not made the requisite showing, based on actual evidence, that one of ordinary skill in the art would have been prompted to modify the teachings of Kepecs in the manner suggested by Examiner Young to provide specifically for all of the claimed subject matter of Claim 218. Examiner Young has failed to establish a prima facie case of obviousness for at least this reason.

Appellants request the reversal of the Section 103(a) rejection of Claim 218.

#### **4.22. Claims 143-146, 249, and 250-252**

Each of Claims 143-146, 249, and 250 is independent. Claims 144-146 are directed to respective statutory classes and contain limitations similar to those of Claim 143. Claims 249 and 250 provide for functionality similar to Claim 143. Claims 251 and 252 depend from Claim 250. All of the arguments discussed below with respect to Claim 143 are equally applicable to each of Claims 144-146, 249, and 250-252.

Substantial evidence is required of all factual findings. Absent substantial evidence, no prima facie case of obviousness exists.

The rejection of Claim 143 is flawed because Examiner Young has not made a prima facie case of obviousness:

- Examiner Young does not provide substantial evidence of a motivation known to one of ordinary skill in the art to provide for *provide data representative of said at least one unlock code and provide data representative of a benefit associated with said outcome upon receiving said data representative of said redemption request*

##### **4.22.1. Examiner's Findings**

Examiner Young finds: “Kepecs lacks explicit recital of ‘receive data representative of a redemption request associated with said outcome; and ...receiving said data representative of said redemption request....’” [Third Office Action, page 7].

Examiner Young further finds:

It would have been obvious to a person of ordinary skill in the art at the time of the invention that the disclosure of Kepecs (col. 1, ll. 12-15) implicitly shows “receive data representative of a redemption request associated with said outcome; and ...receiving said data representative of said redemption request....”, and it would have been

obvious to modify and interpret the disclosure of Kepecs (col. 1, ll. 12-15) cited above as implicitly showing “receive data representative of a redemption request associated with said outcome; and ...receiving said data representative of said redemption request...”, because [of Examiner Young’s Universal Motivation].

[Third Office Action, page 7].

**4.22.2. Examiner’s Findings are Not Supported by Substantial Evidence of Record**

The evidence indicated by the Examiner cannot support the Examiner’s rejection of Claim 143 as obvious in light of Kepecs.

Examiner Young concedes that Kepecs does not explicitly teach *provide data representative of said at least one unlock code and provide data representative of a benefit associated with said outcome upon receiving said data representative of said redemption request*.

Examiner Young argues that the brief reference in Kepecs to “the subsequent resolution upon the redemption of the promotions by consumers” somehow “implicitly” teaches all of the above features, but does not even attempt to provide any rationale in support of this finding. Examiner Young has failed to establish a prima facie case of obviousness for at least this failure to provide a clear and particular finding supported by substantial evidence of record.

Despite the express requirements of Graham, Examiner Young does not even attempt to define the level of ordinary skill in the art, and thus any assertions as to what would have been implicitly suggested to one of ordinary skill in the art are unsupported and suspect. Examiner Young has failed to establish a prima facie case of obviousness for at least this reason.

Further, Examiner Young does not even attempt to explain, for example, how one of ordinary skill in the art (who has not been defined) would have interpreted the brief cited reference as somehow suggesting a system combining

the functionality of both *provide data representative of said at least one unlock code* and *provide data representative of a benefit associated with said outcome upon receiving said data representative of said redemption request*. Without objective evidence in support, Examiner Young's assertions as to what Kepecs "implicitly" recites is an impermissible, unsupported assessment of the prior art. In re Zurko, 258 F.3d at 1385-86. Examiner Young has failed to establish a prima facie case of obviousness for at least this reason.

**4.22.3. No Substantial Evidence of a Proper Motivation to Modify any Teaching of Kepecs**

Examiner Young's Universal Motivation does not suggest the desirability of a system operable to provide for both *provide data representative of said at least one unlock code* and *provide data representative of a benefit associated with said outcome upon receiving said data representative of said redemption request*.

Examiner Young articulates no reasoning why the desirability of resisting fraud, facilitating anonymity, or directing appropriate discounts would specifically suggest the desirability of providing for both of the above features. Even if the claimed subject matter meets the needs recited by the Examiner, "[r]ecognition of a need does not render obvious the achievement that meets that need." Cardiac Pacemakers, 381 F.3d at 1377.

Examiner Young has not made the requisite showing, based on actual evidence, that one of ordinary skill in the art would have been prompted to modify the teachings of Kepecs in the manner suggested by Examiner Young to provide specifically for all of the claimed subject matter of Claim 143. Examiner Young has failed to establish a prima facie case of obviousness for at least this reason.

**4.22.4. Conclusion**

To the extent that Examiner Young is relying solely upon Kepecs in support of an assertion that all of the claimed subject matter of Claims 143-146, 249, and

250-252 was known and obvious to provide for, the Section 103(a) rejection cannot stand. Examiner Young has failed otherwise to indicate substantial evidence in support of Examiner Young's assertions as to what was known (including the asserted motivation), and those assertions, even if true, could not support an obviousness rejection. Accordingly, the Examiner has failed to establish a prima facie case of obviousness for any of Claims 143-146, 249, and 250-252. Appellants request reversal of the Section 103(a) rejection of Claims 143-146, 249, and 250-252.

#### **4.23. Claims 151-154 and 277**

Each of Claims 151-154 and 277 is independent. Claims 151-154 are directed to respective statutory classes and contain limitations similar to those of Claim 151. Claims 277 provides for functionality similar to that of Claim 151. All of the arguments discussed below with respect to Claim 151 are equally applicable to each of Claims 151-154 and 277.

Substantial evidence is required of all factual findings. Absent substantial evidence, no prima facie case of obviousness exists.

The rejection of Claim 151 is flawed because Examiner Young has not made a prima facie case of obviousness:

- Examiner Young has failed to establish with substantial evidence that the claimed subject matter of *provide an indication of said outcome upon a completion of said qualifying action*, was known at the time of invention
- Examiner Young does not provide any evidence of a motivation known to one of ordinary skill in the art to provide for the above claimed feature
- Examiner Young has otherwise failed to provide substantial evidence of record establishing that it would have been obvious to provide specifically for the system of Claim 151

##### **4.23.1. Examiner's Findings**

Although the subject matter differs, Examiner Young relies solely on the same findings and bases for rejection discussed above with respect to Claims 147-150. [Third Office Action, page 9].

**4.23.2. Examiner's Findings are Not Supported by Substantial Evidence of Record**

For at least the reasons discussed above with respect to Claims 147-150, the record cannot support the Examiner's rejection of Claim 151 as obvious in light of Kepecs.

Examiner Young concedes that Kepecs does not explicitly teach "a qualifying action." Examiner Young thus also concedes that Kepecs cannot teach *provide an indication of said outcome upon a completion of said qualifying action*. The Examiner does not even address this limitation at all.

Examiner Young argues that Kepecs somehow "implicitly" teaches a "qualifying action," but does not even attempt to provide any rationale in support of this finding. Examiner Young has failed to establish a prima facie case of obviousness for at least this failure to provide a clear and particular finding supported by substantial evidence of record.

Despite the express requirements of Graham, Examiner Young does not even attempt to define the level of ordinary skill in the art, and thus any assertions as to what would have been implicitly suggested to one of ordinary skill in the art are unsupported and suspect. Examiner Young has failed to establish a prima facie case of obviousness for at least this reason.

Further, Examiner Young does not even attempt to explain, for example, how one of ordinary skill in the art (who has not been defined) would have interpreted the brief references noted by Examiner Young as somehow suggesting *provide an indication of an outcome upon a completion of said qualifying action*. Without objective evidence in support, Examiner Young's assertions as to what Kepecs "implicitly" recites is an impermissible, unsupported assessment of the prior art. In re Zurko, 258 F.3d at 1385-86. Examiner Young has failed to establish a prima facie case of obviousness for at least this reason.



**4.23.3. No Substantial Evidence of a Proper Motivation to Modify any Teaching of Kepecs**

Examiner Young's Universal Motivation does not suggest the desirability of associating a qualifying action with an outcome or providing an indication of the outcome upon completion of the qualifying action. Examiner Young articulates no reasoning why the desirability of resisting fraud, facilitating anonymity, or directing appropriate discounts would specifically suggest the desirability of providing for the above features. Even if the claimed subject matter somehow meets the needs recited by the Examiner, "[r]ecognition of a need does not render obvious the achievement that meets that need." Cardiac Pacemakers, 381 F.3d at 1377.

Examiner Young has not made the requisite showing, based on actual evidence, that one of ordinary skill in the art would have been prompted to modify the teachings of Kepecs in the manner suggested by Examiner Young to provide specifically for all of the claimed subject matter of Claim 151. Examiner Young has failed to establish a prima facie case of obviousness for at least this reason.

**4.23.4. Conclusion**

To the extent that Examiner Young is relying solely upon Kepecs in support of an assertion that all of the claimed subject matter of Claims 151-154 and 277 was known and obvious to provide for, the Section 103(a) rejection cannot stand. Examiner Young has failed otherwise to indicate substantial evidence in support of Examiner Young's assertions as to what was known (including the asserted motivation), and those assertions, even if true, could not support an obviousness rejection. Accordingly, the Examiner has failed to establish a prima facie case of obviousness for any of Claims 151-154 and 277. Appellants request reversal of the Section 103(a) rejection of Claims 151-154 and 277.

## CONCLUSION

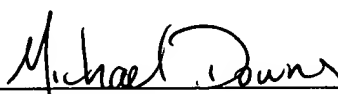
Thus, the Examiner's rejection of the pending claims is improper at least because the Examiner has not provided a proper legal basis for rejecting any claim. Therefore, Appellants respectfully request that the Examiner's rejections be reversed.

If any issues remain, or if there are any further suggestions for expediting allowance of the present application, please contact Michael Downs using the information provided below.

Appellants hereby request any extension of time that may be required to make this Appeal Brief timely. Please charge any fees that may be required for this paper, or credit any overpayment, to Deposit Account No. 50-0271.

Respectfully submitted,

November 1, 2005  
Date

  
\_\_\_\_\_  
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## **APPENDIX A—CLAIMS INVOLVED IN THE APPEAL**

Claims 139-300 are being appealed.

Claims 139-163, 249, 250, 253, 256, 259, 277, 278, 283, 286-291, 295 and 300 are independent.

139. (ORIGINAL) A system for conducting a promotion, comprising:  
a memory;  
a communication port; and  
a processor connected to said memory and said communication port, said processor being operative to:  
generate an outcome;  
generate an unlock code associated with said outcome;  
provide an indication of said outcome;  
provide an indication of said unlock code; and  
provide an indication of a benefit associated with said outcome.

140. (ORIGINAL) A computer readable medium for use in a promotion system, the computer readable medium storing a computer program comprising:  
computer readable means for producing an outcome;  
computer readable means for producing a reveal code associated with said outcome;  
computer readable means for sending an indication of said outcome;  
computer readable means for sending an indication of said reveal code; and  
computer readable means for sending an indication of a benefit associated with said outcome.

141. (ORIGINAL) An article of manufacture, comprising:  
a computer usable medium having a computer readable program means embodied therein for operating an information system, the computer readable program means in said article of manufacture operable to:

- generate an outcome;
- generate an unlock code associated with said outcome;
- provide an indication of said outcome;
- provide an indication of said unlock code; and
- provide an indication of a benefit associated with said outcome.

142. (ORIGINAL) An apparatus for conducting a promotion, comprising:  
means for producing an outcome;  
means for producing a reveal code associated with said outcome;  
means for sending an indication of said outcome;  
means for sending an indication of said reveal code; and  
means for sending an indication of a benefit associated with said outcome.

143. (ORIGINAL) A system for conducting a promotion, comprising:  
a memory;  
a communication port; and  
a processor connected to said memory and said communication port, said processor being operative to:  
    provide data representative of an outcome, said outcome associated with at least one unlock code;  
    provide data representative of said at least one unlock code;  
    receive data representative of a redemption request associated with said outcome; and  
    provide data representative of a benefit associated with said outcome upon receiving said data representative of said redemption request.

144. (ORIGINAL) A computer readable medium for use in a promotion system, the computer readable medium storing a computer program comprising:  
    computer readable means for transmitting data representative of an outcome, said outcome associated with at least one reveal code;  
    computer readable means for transmitting data representative of said at least one reveal code;  
    computer readable means for obtaining data representative of a redemption request associated with said outcome; and  
    computer readable means for transmitting data representative of a benefit associated with said outcome upon receiving said data representative of said redemption request.

145. (ORIGINAL) An article of manufacture, comprising:  
a computer usable medium having a computer readable program means embodied therein for operating an information system, the computer readable program means in said article of manufacture operable to:  
provide data representative of an outcome, said outcome associated with at least one unlock code;  
provide data representative of said at least one unlock code;  
receive data representative of a redemption request associated with said outcome; and  
provide data representative of a benefit associated with said outcome upon receiving said data representative of said redemption request.

146. (ORIGINAL) An apparatus for conducting a promotion, comprising:  
means for transmitting data representative of an outcome, said outcome associated with at least one reveal code;  
means for transmitting data representative of said at least one reveal code;  
means for obtaining data representative of a redemption request associated with said outcome; and  
means for transmitting data representative of a benefit associated with said outcome upon receiving said data representative of said redemption request.

147. (ORIGINAL) A system for conducting a promotion, comprising:  
a memory;  
a communication port; and  
a processor connected to said memory and said communication port, said processor being operative to:  
    receive an indication of an unlock code associated with at least one outcome;  
    associate a qualifying action with said unlock code;  
    provide an indication of said qualifying action; and  
    provide an indication of said unlock code upon a completion of said qualifying action.

148. (ORIGINAL) A computer readable medium for use in a promotion system, the computer readable medium storing a computer program comprising:  
    computer readable means for obtaining an indication of an unlock code associated with at least one outcome;  
    computer readable means for establishing a qualifying action for said unlock code;  
    computer readable means for sending an indication of said qualifying action;  
and  
    computer readable means for sending an indication of said unlock code upon a completion of said qualifying action.

149. (ORIGINAL) An article of manufacture, comprising:  
a computer usable medium having a computer readable program means embodied therein for operating an information system, the computer readable program means in said article of manufacture operable to:  
    receive an indication of an unlock code associated with at least one outcome;  
    associate a qualifying action with said unlock code;  
    provide an indication of said qualifying action; and  
    provide an indication of said unlock code upon a completion of said qualifying action.

150. (ORIGINAL) An apparatus for conducting a promotion, comprising:  
means for obtaining an indication of an unlock code associated with at least one outcome;  
means for establishing a qualifying action for said unlock code;  
means for sending an indication of said qualifying action; and  
means for sending an indication of said unlock code upon a completion of said qualifying action.



151. (ORIGINAL) A system for conducting a promotion, comprising:  
a memory;  
a communication port; and  
a processor connected to said memory and said communication port, said processor being operative to:

- receive an indication of an outcome associated with at least one unlock code;
- associate a qualifying action with said outcome;
- provide an indication of said qualifying action; and
- provide an indication of said outcome upon a completion of said qualifying action.

152. (ORIGINAL) A computer readable medium for use in a promotion system, the computer readable medium storing a computer program comprising:

- computer readable means for obtaining an indication of an outcome associated with at least one unlock code;
- computer readable means for establishing a qualifying action for said outcome;
- computer readable means for sending an indication of said qualifying action;

and

- computer readable means for sending an indication of said outcome upon a completion of said qualifying action.

153. (ORIGINAL) An article of manufacture, comprising:  
a computer usable medium having a computer readable program means embodied therein for operating an information system, the computer readable program means in said article of manufacture operable to:

- receive an indication of an outcome associated with at least one unlock code;
- associate a qualifying action with said outcome;
- provide an indication of said qualifying action; and
- provide an indication of said outcome upon a completion of said qualifying action.

154. (ORIGINAL) An apparatus for conducting a promotion, comprising:  
means for obtaining an indication of an outcome associated with at least one unlock code;

- means for establishing a qualifying action for said outcome;
- means for sending an indication of said qualifying action;
- means for sending an indication of said outcome upon a completion of said qualifying action.

155. (ORIGINAL) A system for conducting a promotion, comprising:  
a memory;  
a communication port; and  
a processor connected to said memory and said communication port, said processor being operative to:  
    receive an indication of an outcome;  
    receive an indication of a qualifying action associated with an unlock code that can unlock said outcome;  
    receive said unlock code;  
    unlock said outcome; and  
    receive an indication of a benefit associated with said outcome.

156. (ORIGINAL) A computer readable medium for use in a promotion system, the computer readable medium storing a computer program comprising:  
    computer readable means for obtaining an indication of an outcome;  
    computer readable means for obtaining an indication of a qualifying action associated with an unlock code that can unlock said outcome;  
    computer readable means for obtaining said unlock code;  
    computer readable means for revealing said outcome; and  
    computer readable means for obtaining an indication of a benefit associated with said outcome.

157. (ORIGINAL) An article of manufacture, comprising:  
a computer usable medium having a computer readable program means embodied therein for operating an information system, the computer readable program means in said article of manufacture operable to:  
    receive an indication of an outcome;  
    receive an indication of a qualifying action associated with an unlock code that can unlock said outcome;  
    receive said unlock code;  
    unlock said outcome; and  
    receive an indication of a benefit associated with said outcome.

158. (ORIGINAL) An apparatus for conducting a promotion, comprising:  
means for obtaining an indication of an outcome;  
means for obtaining an indication of a qualifying action associated with an unlock code that can unlock said outcome;  
means for obtaining said unlock code;  
means for revealing said outcome; and  
means for receiving an indication of a benefit associated with said outcome.

159. (ORIGINAL) A system for conducting a promotion, comprising:  
a memory;  
a communication port; and  
a processor connected to said memory and said communication port, said processor being operative to:

- receive an indication of an unlock code;
- receive an indication of a qualifying action associated with an outcome that can be unlocked by said unlock code;
- receive said outcome;
- unlock said outcome; and
- receive an indication of a benefit associated with said outcome.

160. (ORIGINAL) A computer readable medium for use in a promotion system, the computer readable medium storing a computer program comprising:  
computer readable means for obtaining an indication of an unlock code;  
computer readable means for obtaining an indication of a qualifying action associated with an outcome that can be unlocked by said unlock code;  
computer readable means for obtaining said outcome;  
computer readable means for revealing said outcome; and  
computer readable means for obtaining an indication of a benefit associated with said outcome.

161. (ORIGINAL) An article of manufacture, comprising:  
a computer usable medium having a computer readable program means embodied therein for operating an information system, the computer readable program means in said article of manufacture operable to:

- receive an indication of an unlock code;
- receive an indication of a qualifying action associated with an outcome that can be unlocked by said unlock code;
- receive said outcome;
- unlock said outcome; and
- receive an indication of a benefit associated with said outcome.

162. (ORIGINAL) An apparatus for conducting a promotion, comprising:  
means for obtaining an indication of an unlock code;  
means for obtaining an indication of a qualifying action associated with an outcome that can be unlocked by said unlock code;  
means for obtaining said outcome;  
means for revealing said outcome; and  
means for obtaining an indication of a benefit associated with said outcome.

163. (NEW) A system comprising:  
a processor; and  
a memory in communication with the processor, the memory storing instructions configured to direct the processor to perform steps of:  
generating an outcome;  
generating an unlock code capable of unlocking said outcome;  
providing an indication of said outcome;  
providing an indication of said unlock code; and  
providing an indication of a benefit associated with said outcome.

164. (NEW) The system of claim 163, in which the instructions are further configured to direct the processor to perform a step of:  
receiving a redemption request associated with said outcome.

165. (NEW) The system of claim 164, wherein said redemption request is received from at least one of the following:  
a user, and  
an intermediary.

166. (NEW) The system of claim 163, in which the instructions are further configured to direct the processor to perform a step of:  
associating a qualifying action with said unlock code.

167. (NEW) The system of claim 166, in which the instructions are further configured to direct the processor to perform a step of:  
associating an expiration date with said qualifying action.

168. (NEW) The system of claim 166, in which the instructions are further configured to direct the processor to perform a step of:  
providing an indication of said qualifying action.

169. (NEW) The system of claim 166, in which the instructions are further configured to direct the processor to perform a step of:  
verifying a completion of said qualifying action.

170. (NEW) The system of claim 166, in which the instructions are further configured to direct the processor to perform a step of:  
receiving an indication of a completion of said qualifying action.

171. (NEW) The system of claim 166, wherein said providing an indication of a benefit associated with said outcome is completed only after said qualifying action is completed.

172. (NEW) The system of claim 166, wherein said unlock code can be provided to a user only after said user has completed said qualifying action.

173. (NEW) The system of claim 163, in which the instructions are further configured to direct the processor to perform a step of:  
associating a qualifying action with said benefit.

174. (NEW) The system of claim 163, in which the instructions are further configured to direct the processor to perform a step of:  
associating a qualifying action with said outcome.



175. (NEW) The system of claim 174, in which the instructions are further configured to direct the processor to perform a step of:

associating an expiration date with said qualifying action.

176. (NEW) The system of claim 174, in which the instructions are further configured to direct the processor to perform a step of:

invalidating said qualifying action.

177. (NEW) The system of claim 174, in which the instructions are further configured to direct the processor to perform a step of:

providing an indication of said qualifying action.

178. (NEW) The system of claim 174, in which the instructions are further configured to direct the processor to perform a step of:

verifying a completion of said qualifying action.

179. (NEW) The system of claim 174, in which the instructions are further configured to direct the processor to perform a step of:

receiving an indication of a completion of said qualifying action.

180. (NEW) The system of claim 174, wherein said providing an indication of a benefit associated with said outcome is completed only after said qualifying action is completed.

181. (NEW) The system of claim 163, in which the instructions are further configured to direct the processor to perform at least one of the following:

receiving an indication of a completion of a qualifying action associated with said unlock code; and

receiving an indication of a completion of a qualifying action associated with said outcome.

182. (NEW) The system of claim 163, in which the instructions are further configured to direct the processor to perform at least one of the following:

verifying a completion of a qualifying action associated with said unlock code; and

verifying a completion of a qualifying action associated with said outcome.

183. (NEW) The system of claim 163, in which the instructions are further configured to direct the processor to perform at least one of the following:

determining at least one intermediary device in communication with the processor to which to provide said indication of said unlock code; and

determining at least one intermediary device in communication with the processor to which to provide said indication of said outcome.

184. (NEW) The system of claim 163, in which the instructions are further configured to direct the processor to perform at least one of the following:

determining at least one intermediary to which to provide said indication of said unlock code; and

determining at least one intermediary to which to provide said indication of said outcome.

185. (NEW) The system of claim 163, in which the instructions are further configured to direct the processor to perform at least one of the following:

determining at least one user to whom to provide said indication of said outcome; and

determining at least one user to whom to provide said indication of said unlock code.

186. (NEW) The system of claim 163, in which the instructions are further configured to direct the processor to perform at least one of the following:

determining at least one user device in communication with the processor to which to provide said indication of said outcome; and

determining at least one user device in communication with the processor to which to provide said indication of said unlock code.

187. (NEW) The system of claim 163, in which the instructions are further configured to direct the processor to perform at least one of the following:

determining how many outcomes to provide to a user; and

determining how many unlock codes to provide to a user.

188. (NEW) The system of claim 163, in which the instructions are further configured to direct the processor to perform at least one of the following:

determining how many outcomes to provide to a user device in communication with the processor; and

determining how many unlock codes to provide to a user device in communication with the processor.

189. (NEW) The system of claim 163, in which the instructions are further configured to direct the processor to perform at least one of the following:

- determining how many outcomes to provide to an intermediary; and
- determining how many unlock codes to provide to an intermediary.

190. (NEW) The system of claim 163, in which the instructions are further configured to direct the processor to perform at least one of the following:

- determining how many outcomes to provide to an intermediary device in communication with the processor; and

- determining how many unlock codes to provide to an intermediary device in communication with the processor.

191. (NEW) The system of claim 163, in which the instructions are further configured to direct the processor to perform at least one of the following:

- receiving an indication of a behavior of a recipient of said indication of said outcome;

- characterizing a behavior of a recipient of said indication of said outcome;
- and

- comparing a behavior of a recipient of said indication of said outcome to a qualifying action indicated to said recipient.

192. (NEW) The system of claim 163, in which the instructions are further configured to direct the processor to perform at least one of the following:

- determining an expected value of said outcome; and

- determining a frequency distribution associated with said outcome.

193. (NEW) The system of claim 163, in which the instructions are further configured to direct the processor to perform at least one of the following:  
providing an indication of an expected value of said outcome; and  
providing an indication of a frequency distribution associated with said outcome.

194. (NEW) The system of claim 163, in which the instructions are further configured to direct the processor to perform at least one of the following:  
receiving an indication of an unlocking of said outcome; and  
receiving an indication of a selection of said outcome for unlocking.

195. (NEW) The system of claim 163, in which the instructions are further configured to direct the processor to perform a step of:  
associating said outcome with a benefit.

196. (NEW) The system of claim 163, in which the instructions are further configured to direct the processor to perform at least one of the following:  
providing information associated with said outcome;  
determining a condition for display of information associated with said outcome; and  
providing an indication of an expected value of said outcome.

197. (NEW) The system of claim 163, in which the instructions are further configured to direct the processor to perform at least one of the following:  
receiving payment for said indication of said unlock code; and  
receiving payment for said indication of said outcome.

198. (NEW) The system of claim 163, in which the instructions are further configured to direct the processor to perform a step of:  
verifying a proper unlocking of said outcome.

199. (NEW) The system of claim 163, further wherein said outcome is associated with at least one of a symbol, value, identifier, benefit or prize.

200. (NEW) The system of claim 163, wherein said outcome is locked.

201. (NEW) The system of claim 163, wherein said outcome can only be unlocked by said unlock code.

202. (NEW) The system of claim 163, wherein said outcome can only be unlocked by said unlock code for a predetermined period of time.

203. (NEW) The system of claim 163, wherein said outcome can be unlocked by only one unlock code.

204. (NEW) The system of claim 163, wherein said outcome can be unlocked by at least two unlock codes.

205. (NEW) The system of claim 163, wherein said unlock code can unlock only one outcome.

206. (NEW) The system of claim 163, wherein said unlock code can unlock at least two outcomes.

207. (NEW) The system of claim 206, wherein after being used to unlock a first outcome, said unlock code cannot be used to unlock any more outcomes.

208. (NEW) The system of claim 163, wherein said unlock code is reusable.

209. (NEW) The system of claim 163, wherein said providing said indication of said outcome comprises:  
providing said indication of said outcome to at least one user.

210. (NEW) The system of claim 163, wherein said providing said indication of said outcome comprises:  
providing said indication of said outcome to at least one user device in communication with the processor.

211. (NEW) The system of claim 163, wherein said providing said indication of said outcome comprises:  
providing said indication of said outcome to at least one intermediary.

212. (NEW) The system of claim 163, wherein said providing said indication of said outcome comprises:  
providing said indication of said outcome to at least one intermediary device in communication with the processor.

213. (NEW) The system of claim 163, wherein said providing said indication of said unlock code comprises:  
providing said indication of said unlock code to at least one intermediary.

214. (NEW) The system of claim 163, wherein said providing said indication of said unlock code comprises:

providing said indication of said unlock code to at least one intermediary device in communication with the processor.

215. (NEW) The system of claim 163, wherein said providing said indication of said unlock code comprises:

providing said indication of said unlock code to at least one user.

216. (NEW) The system of claim 163, wherein said providing said indication of said unlock code comprises:

providing said indication of said unlock code to at least one user device in communication with the processor.

217. (NEW) The system of claim 163, wherein said outcome has an associated expiration date.

218. (NEW) The system of claim 163, wherein said unlock code has an associated expiration date.

219. (NEW) The system of claim 163, wherein said benefit has an associated expiration date.

220. (NEW) The system of claim 163, wherein providing said indication of said outcome includes providing said indication of said outcome to a plurality of users.



221. (NEW) The system of claim 220, wherein said benefit varies in relation to how many of said plurality of users unlock said outcome.

222. (NEW) The system of claim 220, wherein said benefit varies in relation to how many of said plurality of users provide a redemption request associated with said outcome.

223. (NEW) The system of claim 220, wherein said benefit varies in relation to how many of said plurality of users complete a qualifying action associated with said outcome.

224. (NEW) The system of claim 220, wherein said benefit varies in relation to how many of said plurality of users complete a qualifying action associated with said unlock code.

225. (NEW) The system of claim 163, wherein providing said indication of said unlock code includes providing said indication of said unlock code to a plurality of users.

226. (NEW) The system of claim 163, in which the instructions are further configured to direct the processor to perform at least one of the following:  
associating biometric information with said outcome;  
associating biometric information with said unlock code; and  
associating biometric information with said benefit.

227. (NEW) The system of claim 163, in which the instructions are further configured to direct the processor to perform a step of:

associating said unlock code with a user device in communication with the processor.

228. (NEW) The system of claim 163, in which the instructions are further configured to direct the processor to perform a step of:

associating said outcome with a user device in communication with the processor.

229. (NEW) The system of claim 163, in which the instructions are further configured to direct the processor to perform a step of:

receiving biometric information associated with a user.

230. (NEW) The system of claim 163, in which the instructions are further configured to direct the processor to perform a step of:

determining a user device identifier.

231. (NEW) The system of claim 163, in which the instructions are further configured to direct the processor to perform a step of:

associating said outcome with a user device identifier.

232. (NEW) The system of claim 163, in which the instructions are further configured to direct the processor to perform a step of:

associating said unlock code with a user device identifier.

233. (NEW) The system of claim 163, in which the instructions are further configured to direct the processor to perform a step of:

associating said benefit with a user device identifier.

234. (NEW) The system of claim 163, in which the instructions are further configured to direct the processor to perform a step of:

receiving a user identifier.

235. (NEW) The system of claim 163, wherein said providing an indication of a benefit associated with said outcome occurs before said providing an indication of said unlock code.

236. (NEW) The system of claim 163, wherein said providing said indication of a benefit associated with said outcome occurs before said providing said indication of said unlock code.

237. (NEW) The system of claim 163, wherein said providing said indication of a benefit associated with said outcome occurs before said generating an outcome.

238. (NEW) The system of claim 163, wherein said providing said indication of a benefit associated with said outcome occurs before said generating an unlock code.

239. (NEW) The system of claim 163, wherein said generating an outcome includes selecting an outcome from a plurality of predetermined outcomes.

240. (NEW) The system of claim 163, wherein said generating an outcome includes identifying a predetermined outcome.

241. (NEW) The system of claim 163, wherein said generating an outcome includes receiving an indication of a designated outcome to use.

242. (NEW) The system of claim 163, wherein said generating an unlock code includes selecting an unlock code from a plurality of predetermined unlock codes.

243. (NEW) The system of claim 163, wherein said generating an unlock code includes identifying a predetermined unlock code.

244. (NEW) The system of claim 163, wherein said generating an unlock code includes receiving an indication of a designated unlock code to use.

245. (NEW) The system of claim 163, in which the instructions are further configured to direct the processor to perform a step of:  
invalidating said outcome.

246. (NEW) The system of claim 163, in which the instructions are further configured to direct the processor to perform a step of:  
invalidating said unlock code.

247. (NEW) The system of claim 163, in which the instructions are further configured to direct the processor to perform a step of:  
invalidating said benefit.

248. (NEW) The system of claim 163,  
further comprising an intermediary device in communication with the  
processor, and  
in which the redemption request is received from the intermediary device.

249. (NEW) A system comprising:  
a processor; and  
a memory in communication with the processor, the memory storing  
instructions configured to direct the processor to perform steps of:  
providing data representative of an outcome, said outcome associated with at  
least one unlock code;  
providing data representative of said at least one unlock code;  
receiving data representative of a redemption request associated with said  
outcome; and  
providing data representative of a benefit associated with said outcome upon  
receiving said data representative of said redemption request.

250. (NEW) A system comprising:  
a processor; and  
a memory in communication with the processor, the memory storing instructions configured to direct the processor to perform steps of:  
determining at least one outcome;  
determining at least one unlock code for at least one of said at least one outcome;  
sending at least one indication of one of said at least one outcome;  
sending an at least one indication of one of said at least one unlock code;  
receiving a redemption request associated with at least one of said at least one outcome; and  
sending at least one indication of at least one benefit associated with at least one of said at least one outcome.

251. (NEW) The system of claim 250, wherein said unlock code has an associated qualifying action.

252. (NEW) The system of claim 250, wherein said outcome has an associated qualifying action.

253. (NEW) A system comprising:  
a processor; and  
a memory in communication with the processor, the memory storing instructions configured to direct the processor to perform steps of:  
    providing an indication of a promotion outcome to a user and an indication of an unlock code associated with said promotion outcome to an intermediary;  
    receiving a redemption request associated with said promotion outcome; and  
    providing an indication of a benefit associated with said promotion outcome.

254. (NEW) The system of claim 253, in which the instructions are further configured to direct the processor to perform a step of:  
    identifying said promotion outcome.

255. (NEW) The system of claim 254, in which the instructions are further configured to direct the processor to perform a step of:  
    identifying said unlock code associated with said promotion outcome.

256. (NEW) A system comprising:  
a processor; and  
a memory in communication with the processor, the memory storing instructions configured to direct the processor to perform steps of:  
providing an indication of a promotion outcome to an intermediary and an indication of an unlock code associated with said promotion outcome to a user;  
receiving a redemption request associated with said promotion outcome; and  
providing an indication of a benefit associated with said promotion outcome.

257. (NEW) The system of claim 256, in which the instructions are further configured to direct the processor to perform a step of:  
identifying said promotion outcome.

258. (NEW) The system of claim 257, in which the instructions are further configured to direct the processor to perform a step of:  
identifying said unlock code associated with said promotion outcome.

259. (NEW) A system comprising:  
a processor; and  
a memory in communication with the processor, the memory storing instructions configured to direct the processor to perform steps of:  
receiving an indication of an unlock code associated with at least one outcome;  
associating a qualifying action with said unlock code;  
providing an indication of said qualifying action; and  
providing an indication of said unlock code upon a completion of said qualifying action.



260. (NEW) The system of claim 259, in which the instructions are further configured to direct the processor to perform at least one of the following:  
receiving an indication of a completion of said qualifying action; and  
verifying a completion of said qualifying action.

261. (NEW) The system of claim 259, in which the instructions are further configured to direct the processor to perform at least one of the following:  
determining at least one user to whom to provide an indication of said qualifying action; and  
determining at least one user device to which to provide an indication of said unlock code.

262. (NEW) The system of claim 259, in which the instructions are further configured to direct the processor to perform a step of:  
determining how many unlock codes to provide to a user.

263. (NEW) The system of claim 259, in which the instructions are further configured to direct the processor to perform at least one of the following:  
receiving an indication of a behavior of a recipient of said indication of said qualifying action;  
characterizing a behavior of a recipient of said indication of said qualifying action; and  
comparing a behavior of a recipient of said indication of said qualifying action to said qualifying action.

264. (NEW) The system of claim 259, in which the instructions are further configured to direct the processor to perform at least one of the following:  
assigning an identifier to said unlock code; and  
recording a user associated with said indication of said qualifying action.

265. (NEW) The system of claim 259, in which the instructions are further configured to direct the processor to perform at least one of the following:  
receiving an indication that an outcome has been unlocked; and  
receiving an indication of a selection of an outcome for unlocking.

266. (NEW) The system of claim 259, in which the instructions are further configured to direct the processor to perform at least one of the following:  
providing associated information with said unlock code;  
providing associated information with said qualifying action;  
determining a condition for display of information associated with said outcome; and  
providing a payment for receipt of said unlock code.

267. (NEW) The system of claim 259, in which the instructions are further configured to direct the processor to perform a step of:  
receiving a redemption request.

268. (NEW) The system of claim 259, in which the instructions are further configured to direct the processor to perform a step of:  
providing a benefit associated with an unlocked outcome.

269. (NEW) The system of claim 259, in which the instructions are further configured to direct the processor to perform at least one of the following:

- receiving reimbursement for a benefit;
- receiving payment for said indication of said qualifying action; and
- receiving payment for said indication of said unlock code.

270. (NEW) The system of claim 259, in which the instructions are further configured to direct the processor to perform a step of:

- verifying a proper unlocking of an outcome.

271. (NEW) The system of claim 259, wherein said providing an indication of said qualifying action comprises at least one of the following:

- sending said indication of said qualifying action to at least one user device in communication with the processor; and
- providing said indication of said qualifying action to at least one user.

272. (NEW) The system of claim 259, wherein said providing an indication of said unlock code comprises at least one of the following:

- providing said indication of said unlock code to at least one user; and
- sending said indication of said unlock code to at least one user device in communication with the processor.

273. (NEW) The system of claim 259, wherein said indication of an unlock code is received from a controller in communication with the processor.

274. (NEW) The system of claim 259, in which the instructions are further configured to direct the processor to perform a step of:

associating an expiration date with at least one of said outcome, said unlock code, and said qualifying action.

275. (NEW) The system of claim 259, in which the instructions are further configured to direct the processor to perform a step of:

invalidating at least one of said outcome, said unlock code, and said qualifying action.

276. (NEW) The system of claim 259, in which the instructions are further configured to direct the processor to perform a step of:

modifying at least one of said outcome, said unlock code, and said qualifying action.

277. (NEW) A system comprising:

a processor; and

a memory in communication with the processor, the memory storing instructions configured to direct the processor to perform steps of:

receiving an indication of an outcome associated with at least one unlock code;

associating a qualifying action with said outcome;

providing an indication of said qualifying action; and

providing an indication of said outcome upon a completion of said qualifying action.

278. (NEW) A system comprising:  
a processor; and  
a memory in communication with the processor, the memory storing instructions configured to direct the processor to perform steps of:  
receiving an indication of an outcome;  
receiving an indication of a qualifying action associated with an unlock code that can unlock said outcome;  
receiving said unlock code;  
unlocking said outcome; and  
receiving an indication of a benefit associated with said outcome.

279. (NEW) The system of claim 278, in which the instructions are further configured to direct the processor to perform a step of:  
providing an indication of a completion of said qualifying action.

280. (NEW) The system of claim 278, in which the instructions are further configured to direct the processor to perform a step of:  
providing a redemption request associated with said outcome.

281. (NEW) The system of claim 278, in which the instructions are further configured to direct the processor to perform a step of:  
providing information regarding behavior characteristics.

282. (NEW) The system of claim 278, in which the instructions are further configured to direct the processor to perform at least one of the following:

- receiving information associated with said outcome;
- receiving information associated with said unlock code;
- receiving information associated with said qualifying action; and
- receiving information associated with said benefit.

283. (NEW) A system comprising:

- a processor; and
- a memory in communication with the processor, the memory storing instructions configured to direct the processor to perform steps of:
  - receiving an indication of an unlock code;
  - receiving an indication of a qualifying action associated with an outcome that can be unlocked by said unlock code;
  - receiving said outcome;
  - unlocking said outcome; and
  - receiving an indication of a benefit associated with said outcome.

284. (NEW) The system of claim 283, in which the instructions are further configured to direct the processor to perform a step of:

- providing a redemption request associated with said outcome.

285. (NEW) The system of claim 283, in which the instructions are further configured to direct the processor to perform a step of:

- providing an indication of a completion of said qualifying action.

286. (NEW) A system comprising:  
a processor; and  
a memory in communication with the processor, the memory storing instructions configured to direct the processor to perform steps of:  
receiving data representative of an unlock code;  
receiving data representative of a qualifying action associated with an outcome that can be unlocked by said unlock code;  
transmitting data representative of an indication of a completion of said qualifying action;  
receiving data representative of said outcome;  
unlocking said outcome; and  
receiving data representative of a benefit associated with said outcome.

287. (NEW) A system comprising:  
a processor; and  
a memory in communication with the processor, the memory storing instructions configured to direct the processor to perform steps of:  
receiving data representative of an outcome;  
receiving data representative of a qualifying action associated with an unlock code that can unlock said outcome;  
transmitting data representative of an indication of a completion of said qualifying action;  
receiving data representative of said unlock code;  
unlocking said outcome; and  
receiving data representative of a benefit associated with said outcome.

288. (NEW) A system comprising:  
a processor; and  
a memory in communication with the processor, the memory storing instructions configured to direct the processor to perform steps of:  
receiving an indication of at least one outcome;  
receiving an indication of at least one qualifying action, said at least one qualifying action associated with at least one unlock code;  
receiving at least one unlock code upon satisfying at least one of said at least one qualifying action;  
using at least one unlock code to unlock at least one of said at least one outcome;  
sending at least one redemption request upon unlocking of one at least one of said at least one outcome; and  
receiving a benefit associated with an unlocked outcome.

289. (NEW) A system comprising:  
a processor; and  
a memory in communication with the processor, the memory storing instructions configured to direct the processor to perform steps of:  
receiving an indication of at least one outcome;  
receiving an indication of at least one qualifying action, each of said at least one qualifying action associated with at least one unlock code;  
receiving at least one unlock code upon satisfying at least one of said at least one qualifying actions;  
unlocking at least one of said at least one outcome; and  
receiving a benefit associated with an unlocked outcome.



290. (NEW) A system comprising:  
a processor; and  
a memory in communication with the processor, the memory storing instructions configured to direct the processor to perform steps of:  
receiving an indication of at least one unlock code;  
receiving an indication of at least one qualifying action, said at least one qualifying action associated with at least one outcome;  
receiving at least one outcome upon satisfying at least one of said at least one qualifying actions;  
unlocking at least one of said at least one outcome; and  
receiving a benefit associated with an unlocked outcome.

291. (NEW) A method comprising:  
generating a plurality of locked outcomes;  
generating, for each of the plurality of locked outcomes, a respective unlock code capable of unlocking the locked outcome;  
transmitting at least one of the plurality of locked outcomes to a device of a user;  
transmitting at least one of the plurality of unlock codes to a merchant, in which the user is not the same as the merchant; and  
receiving, from the user, an indication of at least one of the at least one unlock codes transmitted to the merchant.

292. (NEW) The method of claim 291, further comprising:  
selling the at least one of the plurality of unlock codes to the merchant.

293. (NEW) The method of claim 291, further comprising:  
selling the at least one of the plurality of locked outcomes to the user.

294. (NEW) The method of claim 291, further comprising:  
receiving an indication that at least one of the at least one locked outcomes  
transmitted to the device of the user has been unlocked.

295. (NEW) A method comprising:  
purchasing a plurality of unlock codes, each unlock code being associated  
with an identifier that identifies a respective lottery outcome;  
determining that a user has satisfied a qualifying action that is associated  
with a retailer;  
receiving, by a device of the retailer from a device of a user, an identifier  
that identifies a lottery outcome that is locked;  
determining an unlock code of the plurality of purchased unlock codes based  
on the received identifier that identifies the lottery outcome that is locked; and  
providing the determined unlock code to the user.

296. (NEW) The method of claim 295, in which determining that the user  
has satisfied the qualifying action comprises:  
determining that the user visited an establishment of the retailer.

297. (NEW) The method of claim 295, in which determining that the user  
has satisfied the qualifying action comprises:  
determining that the user purchased a product from the retailer.

298. (NEW) The method of claim 295, in which determining that the user has satisfied the qualifying action comprises:

receiving from the user an amount for a purchase that is not less than a predetermined amount.

299. (NEW) The method of claim 295, in which the device of the retailer comprises a point-of-sale terminal.

300. (NEW) A method comprising:

generating an outcome;

generating an unlock code capable of unlocking said outcome;

providing an indication of said outcome to at least one user device;

receiving payment for said indication of said unlock code;

providing an indication of said unlock code to an intermediary device in exchange for the payment; and

providing an indication of a benefit associated with said outcome.

## **APPENDIX B—EVIDENCE**

<NONE>

## **APPENDIX C—RELATED PROCEEDINGS**

<NONE>